LA COMMISSION DES
DROITS DE LA PERSONNE
DU MANITOBA

THE MANITOBA
HUMAN RIGHTS
COMMISSION

1985 Annual Report

The Manitoba Human Rights Commission
1007 - 330 Portage Avenue
Winnipeg, Manitoba
R3C 0C4
(204) 945-3007

or

Room 115, P.O. Box 2550
Provincial Government Building
The Pas, Manitoba
R9A 1M4
(204) 623-6411 (Ext. 270)

or

Provincial Government Building
340 - Ninth Street
Brandon, Manitoba
R7A 6C2
(204) 727-8934/728-7000

Toll Free Numbers:
1-800-282-8069 (Winnipeg)
1-800-852-2700 (Brandon)

Telecommunications Device for
Hearing & Speech Impaired:
(204) 945-3442 (Winnipeg)

Above: The cover of last year's annual report featured the above poster created by Susan Attallah, one of the runners-up in the Commission's 1984 poster contest, but the acknowledgement was inadvertently omitted. We would, therefore, like to take this opportunity to apologize to Susan for our oversight and to thank her for her artistic contribution to the 1984 Annual Report of the Manitoba Human Rights Commission.

Cover: The cover of this report displays the new logo for the Manitoba Human Rights Commission which was adopted in 1985. The colours and facial nuances of the stylized human profiles suggest an age spread and the various ethnic and racial groups of the earth, symbolizing the unique and valuable contribution made by each group in a pluralistic society to the enrichment of society as a whole. Concept and design by Karyn Fedun and Bob Riddell.

Manitoba

Attorney General

Winnipeg, Manitoba, CANADA
R3C 0V8

Her Honour,

Pearl McGonigal,

Lieutenant-Governor for the Province

of Manitoba.

Madame:

May it please your Honour, it is my pleasure to present to your Honour the Annual Report of The Human Rights Commission for the year 1985.

Roland Penner, Q.C.

THE MANITOBA HUMAN RIGHTS COMMISSION

LA COMMISSION DES DROITS DE LA PERSONNE DU MANITOBA

The Honourable Roland Penner, Q.C.

Attorney-General

Legislative Building

Winnipeg, Manitoba

R3C 0V8

Sir:

We are pleased to forward to you, the Minister responsible for administration of the Manitoba Human Rights Act, the Annual Report of the Manitoba Human Rights Commission for the calendar year ending December 31, 1985.

Claudia Wright

Claudia Wright

Chairperson

Table of Contents

Page

Commissioners 4

Staff 5

The Function of the Commission 6

- Enforcement of The Act 6
- Education 7
- Special Programs 7
- National and International Liaison 8

Personnel 10

- Responsibilities of Commissioners 10
- Duties of Staff 10

An Overview of 1985 Activities 11

- Board of Commissioners 11
- Staff 12
- Enforcement 12
- Education 13
- Special Programs 14
- Volunteer Program 15
- Regional Offices 15
- Proposed New Legislation 15
- Employee Benefit Plan Guidelines 16
- National and International Events 16
- Future Directions and Needs 17

Appendix A — Adjudication and Appeals 18

Appendix B — Sample Cases 26

Appendix C — Statistical Highlights 34

Appendix D — Biographies of Commissioners 47

Appendix E — The Human Rights Act 48

Appendix F — Evolution of The Human Rights Act 72

Appendix G — The Complaint Form 73

Appendix H — Publications and Audio-Visual Aids 74

The Commissioners

Chairperson:
Claudia Wright

Commissioners: (As at December 31, 1985)

		Term Expires
Claudia Wright	Chairperson	1988
Marek Debicki	Vice-Chairperson	1988
John Lane	Commissioner	1986
Marion Robinsong	Commissioner	1986
Mario Santos	Commissioner	1986
Louise Cloutier	Commissioner	1987
Paul Laporte	Commissioner	1987
Wayne Courchene	Commissioner	1988
Raj Mehta	Commissioner	1988
Jill Oliver	Commissioner	1988

(Three vacancies as at Dec. 31, 1985)

(For biographies of Commissioners see Appendix D)

Minister:

The Honourable Roland Penner, Q.C.
Attorney-General

The Staff (as at December 31, 1985)

Executive Director:
Darlene Germscheid

Administrative Officer:
Linda Kopys

Administrative Secretaries:
Frieda Brandt
Terry Klimchak
Donna May
Jeannette Roque
Maureen Sorokowski

Education Officers:
Roger Young
Judith Burch (Term)

Intake Counsellors:
Steve Landon
Barbara Stanford

Chief Enforcement Officer:
Mariann Burka

Enforcement Officers:
Buelah Blake
Patrick Daly
Sandra Devon
Helen Forrest
Nancy Flintoft Meronek
Kenneth Swain
Sharon Wickman
Stanley Wood
Roger Young
(Temporary Assignment)

The Pas Office

Regional Supervisor:
Ronald Chief

Regional Intake Officer:
Elizabeth Bennett

Brandon Office

Regional Supervisor:
Peggy Pchajek

Regional Secretary:
Isobel Michie

Legal Counsel:
Aaron Berg
Civil Litigation Branch
Dept. of Attorney-General

The Function of The Manitoba Human Rights Commission

The Universal Declaration of Human Rights declares that: "All human beings are born free and equal in dignity and rights." In Manitoba, this ideal has been translated into law by *The Human Rights Act*, a provincial statute which prohibits discrimination on the basis of race, nationality, religion, sex, age, handicap, or other group stereotypes. The complete text of *The Human Rights Act* is reproduced in Appendix E.

The Manitoba Human Rights Commission is the agency chiefly responsible for carrying out the provisions of *The Human Rights Act*. The Commission is authorized by *The Act* to administer the enforcement provisions, to carry out educational activities, and to consider and approve applications for approval of Special Programs in employment, housing, and services. Through these activities, the Commission attempts to reduce discrimination and promote social change leading to equal opportunity for all.

All services provided by the Commission are available to the public without charge.

Enforcement of The Human Rights Act

The Human Rights Act specifically prohibits discrimination on the basis of race, colour, nationality, ethnic or national origin, sex, marital status, physical or mental handicap, age, family status, source of income, religion and political belief. It also prohibits discrimination based on unspecified group factors when the differential treatment is without reasonable cause.

The jurisdiction of the Human Rights Commission is restricted to matters within the constitutional authority of the provincial legislature. Most activities carried on in the province fall within provincial jurisdiction. However complaints against certain federally regulated enterprises, such as airlines, railways and the federal civil service, should be filed with the Canadian Human Rights Commission (telephone 949-2189). The staff of either commission will answer any questions regarding the appropriate jurisdiction to deal with a particular complaint.

The enforcement program of the Commission includes those activities related to the acceptance and disposition of Complaints of Discrimination. The objectives of the enforcement program are to reduce discriminatory behaviour and to alleviate the effects of discrimination by:

a) accepting and investigating complaints with a view to accurately indentifying the existence of illegal discrimination, and

b) affecting settlements which ensure future compliance with *The Human Rights Act* and appropriate remedies for the victims of illegal discrimination.

Any person who believes that someone has contravened a provision of *The Human Rights Act* is invited to contact one of the Commission's Intake Counsellors and discuss his or her concerns. All calls are confidential and the Commission will not act without the caller's consent. If the issue falls within the jurisdiction and scope of *The Act*, the details of the allegation are recorded and the Counsellor arranges an appointment to meet with the complainant to obtain a signed Complaint of Discrimination. A copy of this form is included as Appendix G. (*The Act* requires that a complaint be filed within six months of the alleged contravention.)

As soon as possible, the signed complaint form is served on the party who has been accused of the discriminatory behaviour (the respondent), and he or she is invited to respond to the allegations. A thorough investigation of the allegations and the response is then carried out to determine the facts of the matter and to ensure that the rights of both parties are fully protected. On conclusion of the investigation, the findings are assessed. If the allegation is not supported by the evidence, the complaint is dismissed. If it appears to be justified, attempts are made to resolve the matter through conciliation.

Conciliation is a process common to most Canadian human rights complaint procedures. This allows for complaints to be voluntarily resolved by the parties concerned without adjudication. All matters related to the conciliation stage are confidential.

Should a complaint not be resolved during the conciliation stage, it is referred to the board of Commissioners, who may determine that the matter should be decided by an impartial Adjudicator.

The Adjudicator is appointed by the Attorney-General to hold a formal public hearing. All parties to the complaint are invited to present their arguments. Witnesses may be called and are subject to cross-examination. The Commission has the carriage of the complaint and is represented by legal counsel. The respondent and the complainant may also be represented by legal counsel if they wish.

If the Adjudicator, after hearing all the evidence, rules that a contravention of *The Human Rights Act* has occurred, he or she has the authority to make an order requiring

the respondent to comply with *The Act*; to provide the denied service, employment, or housing; to pay lost wages or out-of-pocket expenses incurred by the complainant; or to pay other damages as may be deemed appropriate by the Adjudicator.

If any party disagrees with an Adjudicator's decision, he or she may file an appeal in the Court of Queen's Bench within the time limit set out in *The Act*. In some cases, complaints may be appealed to the Manitoba Court of Appeal and even to the Supreme Court of Canada.

With the consent of the Attorney-General, criminal proceedings may be launched in certain cases where criminal prosecution for violation of *The Act* appears appropriate. If a person is found guilty in these proceedings, he or she may be subject to a fine of not less than one hundred dollars for an individual and not more than five thousand dollars for a corporation.

A chart of the Usual Steps in Processing Complaints can be found at the end of this section.

Education

It is the objective of the education program to reduce discrimination through educational activities designed to:

a) promote an understanding of, acceptance of, and compliance with *The Human Rights Act*, and

b) further the principles of equality in freedom and dignity, and equality of opportunities for all.

The Commission's education program includes a speaker service through which Commissioners and members of the staff are available to speak to groups about the rights and responsibilities described in *The Act* or any other topic related to human rights. Persons wishing to utilize the speaker service should contact the Human Rights Intake Counsellor.

The education program also includes outreach activities intended to maintain an ongoing liaison with various sectors of the community, and to assist and encourage community initiatives in activities designed to further the principles of human rights.

In addition, the Commission develops and conducts special education projects such as seminars, workshops, and contests through the utilization of both staff and volunteers. Various publications and audio-visual materials are produced by the Commission and loaned or distributed free of charge to the public. See Appendix H for a list of current materials.

Special Programs

Protection against ongoing discrimination by itself is not enough. Historical practices have sometimes limited opportunities for minority groups by excluding them from equal participation in certain areas such as employment. To overcome these long-standing inequalities, it is often necessary to implement corrective measures by giving special preference to minority group members who have been traditionally denied access to training, education, job experience, or other opportunities. Section 9 of *The Act* gives the Commission the authority to approve affirmative action and other Special Programs which are designed to promote the "socio-economic welfare and equality in status" of such groups.

If an employer, rental agent, or service agency wishes to implement such a program, the Commission should be advised as soon as possible and provided with information about the designated target groups, starting and termination dates, and any other information which would demonstrate the manner in which the program would promote the "socio-economic welfare and equality in status" of the target groups. The Special Programs Officer is available to provide assistance and consultation in the completion of the application for approval.

In order to provide an opportunity for affected groups and individuals to express their views and share information about the potential impact of such programs, the public is notified of the receipt of applications by way of a notice in the major newspapers of the community in which the program is to be delivered. Written submissions are invited and, in some situations, public hearings may be held. All relevant information is considered by the Commission in the consideration of applications. If the program is approved, the applicant is advised in writing. With this written approval, the preferential treatment for the specified target group is permitted without contravention of *The Human Rights Act*. The approval may be revoked at any time if the Commission learns that the program is not being carried out in a manner consistent with the principles on which it was approved.

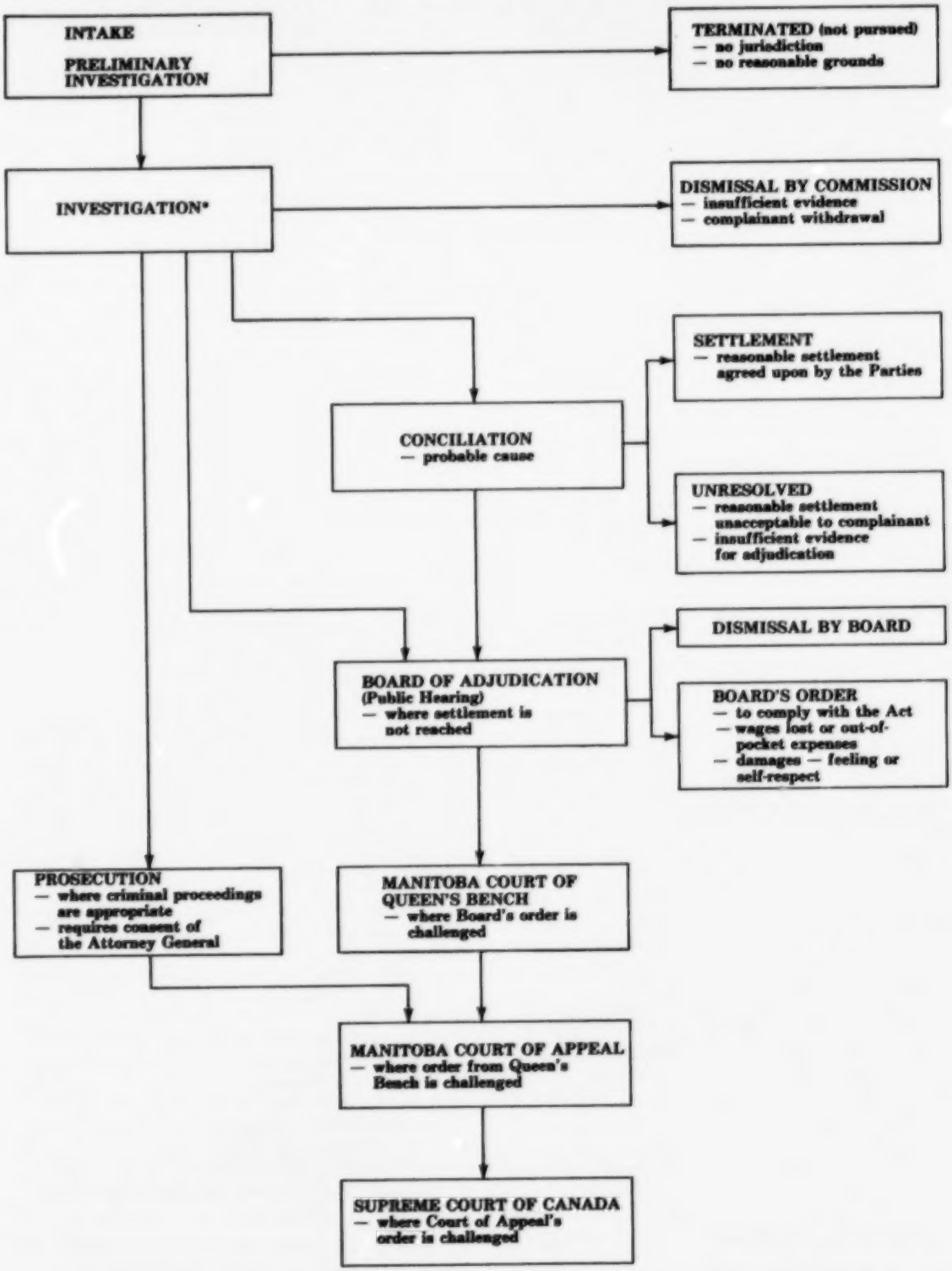
The Manitoba Human Rights Commission may only consider those programs and activities which fall within provincial jurisdiction. Those which fall within the jurisdiction of the federal government should be discussed with the Canadian Human Rights Commission.

National and International Liaison

The Manitoba Human Rights Commission is a member agency of three national and international organizations concerned with human rights. These are the Canadian Association of Statutory Human Rights Agencies (CASHRA), the International Association of Official Human Rights Agencies (IAOHRA), and the National Association of Human Rights Workers. Through membership in these organizations the Commissioners and staff are able to keep informed about recent developments in the field and participate in various staff development and training opportunities, in addition to contributing the knowledge gained from our own experiences and insights to the evolution of human rights theory and legislation.

Another important national liaison organization is the Continuing Federal/Provincial/Territorial Committee of Officials Responsible for Human Rights. Although the Commission is not formally connected with the Committee, the Executive Director has been appointed by the Attorney-General as Manitoba's Official Representative. This Committee is responsible for monitoring Canada's compliance with the various international conventions relating to human rights to which Canada is a party, and provides information and advice to Ministers Responsible for Human Rights at regular Ministerial Conferences. Through the Committee, new and emerging human rights issues are brought to the attention of Ministers for consideration in the development of policy at the governmental level.

Usual Steps in Processing Complaints


INTAKE
PRELIMINARY INVESTIGATION
TERMINATED (not pursued)
— no jurisdiction
— no reasonable grounds
INVESTIGATION*
DISMISSAL BY COMMISSION
— insufficient evidence
— complainant withdrawal
SETTLEMENT
— reasonable settlement agreed upon by the Parties
CONCILIATION
— probable cause
UNRESOLVED
— reasonable settlement unacceptable to complainant
— insufficient evidence for adjudication
DISMISSAL BY BOARD
BOARD OF ADJUDICATION
(Public Hearing)
— where settlement is not reached
BOARD'S ORDER
— to comply with the Act
— wages lost or out-of-pocket expenses
— damages — feeling or self-respect
PROSECUTION
— where criminal proceedings are appropriate
— requires consent of the Attorney General
MANITOBA COURT OF QUEEN'S BENCH
— where Board's order is challenged
MANITOBA COURT OF APPEAL
— where order from Queen's Bench is challenged
SUPREME COURT OF CANADA
— where Court of Appeal's order is challenged

**After investigation, the Commission may decide at its discretion not to pursue conciliation but to choose alternative routes of a Board of Adjudication or prosecution.*

Personnel

The Manitoba Human Rights Commission consists of two components. One component is the board of Commissioners, chosen from the public at large by the Lieutenant Governor-In-Council. The board meets on a monthly basis and is responsible for the policies and general direction of the Commission. The second component is the civil service staff, which carries out the day-to-day activities of the Commission

The Responsibilities of The Board of Commissioners

Commissioners are selected from various geographic, cultural, social, and economic sectors of the province. They are appointed for three year terms, and serve on a part-time basis. There are thirteen Commissioners, one of whom is the Chairperson and another the Vice-Chairperson.

The board of Commissioners establishes the policies which determine the manner in which the professional staff administer the programs and activities of the agency, and monitors and evaluates such programs. It is also the function of the board to ensure the appropriate disposition of complaints under *The Act* and to approve Special Programs. All complaints and requests for Special Program approval are reviewed in detail by the board prior to disposition.

One point that should be stressed is that neither the staff nor the board of Commissioners has the authority to order compensation or remedies for persons who feel they have suffered as a result of discrimination. If it appears that *The Act* has been violated and efforts to reach a mutually agreeable settlement have been unsuccessful, the only further action which may be taken by the Commission is to request the Attorney-General to appoint an impartial adjudicator to hear the matter and make an appropriate order. Where a criminal prosecution for violation of *The Human Rights Act* appears to be appropriate (not a common occurrence) the Commission may recommend that the Attorney-General commence a prosecution.

The Duties of The Staff

Human rights work is a demanding profession. Human rights professionals are constantly placed in sensitive situations, and they must bring to their work a wide variety of skills. They are required to be effective listeners and to have the ability to relate to persons from varied backgrounds, while maintaining neutrality and objectivity.

The Intake Counsellors respond to all inquiries from the public and will assist in the filing of formal complaints. They will accept requests for speaker services, provide information regarding other services of the Commission, and assist callers to reach appropriate alternate agencies if *The Human Rights Act* does not appear to be applicable.

Enforcement Officers are responsible for the investigation and conciliation of complaints. Coupled with investigative skills, officers must also be able to negotiate settlements between often hostile parties without compromising the intent of *The Act*.

One of the enforcement officers is designated as the Special Programs Officer. This person provides assistance to applicants for Special Program approval and assists the board of Commissioners in the processing of applications.

The Commission employs one Education Officer. This individual is involved in a variety of educational activities including speaker services, outreach, and general consultation. The Education Officer must be energetic and creative, and be able to work effectively with business, community groups, and other institutions and organizations in the delivery of human rights education programs.

The quality and efficiency of the work carried out by the Commission is greatly enhanced by a small complement of competent and dedicated support staff who provide the necessary administrative support services.

In each of the Commission's regional offices, the Regional Supervisor investigates and conciliates complaints, conducts educational activities, and supervises the general administration of the office. In The Pas, the Intake Clerk responds to inquiries and accepts complaints, and provides clerical and secretarial support services. The Regional Supervisor in Brandon is assisted by a part-time secretary-receptionist.

The staff work under the direction of the Executive Director, who is responsible to both the board of Commissioners and the Department of the Attorney-General for the effective operation of the Commission.

An Overview of 1985 Activities

Nineteen eighty-five has brought many changes and events of great significance for human rights in Canada and here in Manitoba. Economic conditions, the priorities of government, and judicial interpretations of human rights legislation have all left their mark. While some of these events appear to have strengthened the protections of human rights, there have been disappointments and frustration as well. It has been a year of reminders for human rights agencies and organizations that, while much progress is being made, barriers to the attainment of equality for all continue to emerge. New and creative approaches must be explored and a high level of commitment and enthusiasm must be maintained if our society is to be eventually freed of discrimination and prejudice and their destructive consequences.

Over the past few years the Manitoba Human Rights Commission has been actively evaluating and reassessing the effectiveness of its activities, objectives, and public image. As part of this process, a new logo was adopted in 1985 and is now being incorporated into the Commission's visual image. The design, which forms the central theme of this year's cover, integrates a number of important human rights elements. It consists of three stylized human profiles forming a total of six different spaces. The colours and subtle facial nuances suggest not only the various racial and ethnic groups of the earth, but also an age spread. The Commission felt that this design symbolizes the unique and valuable contribution made by each group in a pluralistic society towards the enrichment of society as a whole.

Many other changes have occurred at the Manitoba Human Rights Commission over the past year. There have been personnel changes in both the board of Commissioners and in the staff. The acquisition of a computer for better case management, data collection and planning; procedural changes; and a new regional office have all contributed to an eventful year for the Commission. In general, this activity has been positive and exciting; and, although the incorporation of new personnel, equipment, and procedures has inevitably resulted in further demands on an already strained staff, this investment in the future efficiency of the Commission has been essential.

External events, as well, have had an impact on the work of the Commission. One such event was the coming into force of Section 15 of *The Canadian Charter of Rights and Freedoms* on April 15th, 1985. This section, known as the "equality rights" section, contains the protections against discrimination which parallel all Canadian human rights legislation. Other aspects of *The Charter* had already been cited in human rights litigation in several jurisdictions, including Manitoba and, in 1985, at least one Manitoba case involved the possible application of Section 15. Although it has been argued that *The Charter* applies only to government and not the private sector as does *The Manitoba Human Rights Act*, it will clearly affect the interpretation and application of human rights legislation in all jurisdictions in Canada.

The Commission was also pleased to learn that, in 1985, the governments of the Yukon and the Northwest Territories had proposed human rights legislation in their respective jurisdictions. If passed into law, these statutes will extend the protection of human rights to all jurisdictions in Canada.

These events and many others to be described later in this report have made 1985 a most exciting and eventful year.

Board of Commissioners

This past year saw many changes in the membership of the board of Commissioners.

In addition to the vacancy carried over from 1984, six other vacancies resulted from the resignations of commissioners for various reasons. Commissioners Unni Hordern and Don King resigned when personal and career decisions took them away from Manitoba; and Commissioners Joy Cooper, Mario Sosa, Hélène Bulger, and Jim Eagle resigned due to career and time demands.

Four of these vacancies have now been filled with the appointments of Louise Cloutier, Marion Robinsong, Raj Mehta, and Paul Laporte. Biographical information about these new commissioners can be found in Appendix D.

The term of office of Claudia Wright, Chairperson of the Commission, expired in April and she was reappointed for an additional term of three years. Also reappointed were Marek Debicki, Vice-Chairperson, and Commissioners Jill Oliver and Wayne Courchene.

At the end of 1985, three vacancies remain in the membership of the board of Commissioners.

Staff

The 1985/86 budget allocation included three new staff positions for the agency. These included an additional intake counsellor, a secretarial position, and a regional officer. The Commission's request for a permanent staff-year for the manager of the Volunteer Program was not approved. A term contract permitted the continuation of the volunteer program under the management of Judy Burch for an additional three months only.

In June, Enforcement Officer, Walter Budge discontinued his employment with the Commission creating a vacancy within the enforcement staff. His duties were temporarily assigned to Roger Young who had several years enforcement experience prior to his appointment as Education Officer. Judy Burch was appointed as Education Officer and, in this position, she was able to maintain a small number of volunteer projects in addition to carrying out her new duties and responsibilities.

Another vacancy occurred in April when Administrative Officer, J. A. Kenneth McCuaig accepted a new position elsewhere in Government. After a Civil Service competition, the position was filled in September by Linda Kopys who had been with the Commission for three years in the position of Administrative Secretary. The vacancy created by her promotion was filled by the transfer of Jeannette Roque from the Law Enforcement Section of the Attorney-General's Department.

The successful candidates in the competitions for Intake Counsellor (Winnipeg) and Regional Officer (Brandon) were Steve Landon and Peggy Pchajek respectively. They began their training in July and, in September, Steve assumed his full duties and responsibilities. Peggy completed her training and began to offer full-time service from the Brandon Office on October 1st.

The new secretarial position was used to create two half-time positions. Isobel Michie was hired as secretary-receptionist in the Brandon Office and Maureen Sorokowski filled the remaining half of the position in Winnipeg.

Enforcement

An event of significance to the enforcement program was the appointment of Mr. Aaron Berg as permanent legal counsel to the Commission. Mr. Berg has been employed by the Civil Litigation Branch of the Department of the Attorney-General to represent the Commission before Boards of Adjudication and in appeal proceedings, and to provide such legal advice and assistance as may be required with respect to the day-to-day enforcement activities of the Commission. Prior to this appointment, lawyers were appointed by the Attorney-General's office from the private bar to act for the Commission. As Mr. Berg is an employee of the Government of Manitoba, outside counsel will continue to be appointed to deal with matters which involve complaints against the Government.

In the 1984 Annual Report, it was reported that the Commission had been forced to introduce a backlog system to deal with the tremendous increase in the number of complaints requiring assessment and investigation. This backlog of unassigned enforcement cases continued to be a matter of increasing concern during 1985. Although the additional staff-years were approved as of April 1st, it took several months for the recruitment, selection, and training of the new employees and, by August, the backlog had increased to 132 cases, resulting in delays of up to six months before the investigation of a formal complaint could begin.

Early in the year, in an effort to ensure the most effective use of staff time, existing procedures were examined to identify areas in which efficiency might be increased without corresponding reductions in effectiveness.

One resulting procedural change involved training the intake counsellors to assist in the completion of formal complaints, and provided for the filing of complaints at an initial intake interview. This eliminated the need for file preparation and assignment to an investigating officer at this early stage. (The new procedure for filing a complaint is described in the earlier section of this report entitled "Enforcement of the Human Rights Act".)

Although such procedural modifications and the increase in staff-years resulted in a reduction of the backlog to approximately 90 cases by the end of 1985, the Commission continued to be concerned about the impact of the four to five month delay in the commencement of the investigation. Furthermore, current projections indicate that this reduction is short-term and that the backlog will continue to grow with the present allocation of staff-years. For over three years the rate of incoming complaints has been greater than the Commission's capacity to respond. In addition, the requirement for increased activity in other program areas could only be met by diverting enforcement staff time to those areas, thereby compounding the problem. The negative impact of this situation on the effectiveness and accessibility of the rights and protections offered by *The Human Rights Act* is a matter of continuing concern for both Commissioners and staff.

1985 also brought about several significant court rulings. The enforcement role of the Commission is defined by the provisions of *The Human Rights Act* and the Commission is bound by the interpretations of the courts. These decisions, therefore, have a tremendous impact on the resolution of complaints before the Commission.

A series of decisions involving discrimination based on gender-determined characteristics such as pregnancy have clearly directed that the protection against sex discrimination does not extend this far. In addition, these decisions have further undermined arguments that the forms of prohibited discrimination in employment are not limited to those group factors specifically mentioned in *The Human Rights Act*. (These decisions are currently under appeal.)

Another important decision involved a complaint with respect to a series of newspaper articles which were alleged to have been discriminatory in that they included statements which negatively stereotyped Native people. In this case, the Manitoba Court of Appeal upheld a Queen's Bench ruling that *The Human Rights Act* did not apply to this form of public statement due to the specific wording of *The Act*.

The Commission is of the view that these decisions have eroded the promise of equality of opportunity based on individual merit which is the underlying concept of human rights legislation. Where appropriate, such decisions will be appealed to the higher courts and arguments will be made for interpretations which are, in the opinion of the Commission, more compatible with the intent of *The Act*. However, in many instances the problem can only be addressed by the introduction of new legislation.

One decision of the Supreme Court of Canada reinforced the responsibility of governments to ensure that legislation is carefully drafted and that it clearly reflects the intended policy objectives of the government. The matter of Doreen Maud Craton and the Winnipeg Teachers Society involved a conflict between *The Human Rights Act* which prohibits discrimination in employment on the basis of age, and *The Public Schools Act* which empowers a school board to fix a compulsory retirement age for teachers. Mrs. Craton was opposing the requirement that she retire following her sixty-fifth birthday and had sought a declaration in the Court of Queen's Bench that mandatory retirement contravened *The Human Rights Act* and that her employment could not therefore be terminated. In a unanimous decision, the Supreme Court supported the findings of the lower courts, stating that "Human rights legislation is of a special nature and declares public policy regarding matters of general concern." The Court went on to say, "It is ... of such nature that it may not be altered, amended, or repealed, nor may exceptions be created to its provisions, save by clear legislative pronouncement."

This decision is of tremendous significance in that it affirms the right to freedom from all forms of discrimination prohibited by human rights laws unless governments clearly and specifically legislate exceptions, for which they may be held publicly accountable.

For a full report on the status of matters under adjudication or before the courts, please see Appendix A. Appendix B contains summaries of sample cases concluded in 1985 which were resolved without adjudication.

Education

The Commission continued it's efforts to promote and deliver human rights education in 1985 in the face of continued staff shortages and the loss of the volunteer program. (A more detailed discussion of events relating to the volunteer program can be found later in this report.) As the reactive approach of the individual complaint process becomes less effective under the restrictions of economic restraint, it becomes increasingly evident that more effort must be expended on the prevention of discrimination. To this end, the enforcement process must be supplemented by and linked to effective human rights education.

In the latter months of the year, the Commission launched a major project intended to promote the teaching of human rights in Manitoba schools. The objective is to increase the awareness of and sensitivity to human rights principles in the hope that tomorrow's citizens might help to create a social climate in which the incidence of discriminatory action is significantly reduced.

Over the years, the business community in Manitoba has demonstrated a high degree of interest in human rights and a willingness to comply with the legislation and to cooperate with Commission staff in the investigation and conciliation of complaints. However, there has clearly been a need for more readily available information about the investigative process and other related matters. A brochure has now been developed which will help to respond to this need. It will describe the rights and responsibilities of persons named as respondents in Complaints of Discrimination and is to be published early in 1986. Over the coming years, the Commission hopes to increase the delivery of education programs to the business community in the form of seminars, literature, and consultation on

issues related to the prevention and correction of discriminatory or potentially discriminatory business practices, the implementation and delivery of affirmative action and other Special Programs, and other human rights matters of interest to business.

In April, the Commission sponsored a workshop on "Offensive Terms" with the assistance of facilitator and discussion leader, Dr. Jack Kehoe. Dr. Kehoe is with the Faculty of Education at the University of British Columbia and served as the Director of Research for "Equality Now". The purpose of the workshop was to promote a greater awareness of the negative impact of derogatory terms and stereotypical jokes and comments. The sessions were well attended by students, and representatives of business and the media.

During the summer, the Commission had the pleasure of hosting a lunch for 20 children from Belfast, Ireland who had been brought to Manitoba for a 4 week vacation by The Irish Association of Manitoba and the Salvation Army (Belfast). The visit to Canada provided the opportunity for these children to experience a social environment in which religious and political differences do not result in the violent conflicts and human suffering to which they had been too frequently exposed over the course of their brief lives. The luncheon was held at a local restaurant which provided an assortment of games and activities for the children to enjoy before and after a lunch of pizza and hot dogs. The sensitivity and enthusiasm with which the media covered this event surely helped all Manitobans to come to a greater appreciation of the desirability of a community in which the respect for human rights is fostered and maintained.

Through the STEP In Government Program, the Commission was able to initiate three research projects, one of which involved research about the lives and accomplishments of Native persons who have earned the respect of their communities. Many biographical sketches have been compiled and it is intended that this material will form the basis of a future publication contributing to the identification of positive role models in the Native community.

In addition to the above projects, the Commission continued to provide speakers through the Speaker Service program. In 1985, in addition to a number of informal consultations and outreach contacts, a total of 125 speaking engagements were carried out by staff, commissioners, and volunteers.

Special Programs

In 1984, a committee of Commissioners was established to review the procedures for dealing with applications for approval of affirmative action and other Special Programs under Section 9 of *The Act*. In 1985, a request for a full-time staff position to deal with affirmative action and other Special Programs was incorporated into the budget request for the fiscal year 1986/87. The committee continued its work pending a response to this request. However, with no staff available to provide assistance, progress was painfully slow, and, before much could be accomplished, the Commission found itself the subject of legal action with respect to these procedures. (See Obirek, et al and Manitoba Human Rights Commission reported in Appendix A.)

The major criticism was that parties who might be negatively affected by such programs did not have the opportunity to express their concerns and contribute information for consideration in the application process. The Commission recognized the validity of this position and the necessity for some staff time to be immediately allocated to improve the methods for assessment and approval of Special Program applications.

New procedures were designed and implemented which provided for public input into the process and, when reviewed by the court, were found to be fair and reasonable. The new process is described in the section of this report entitled "The Function of the Manitoba Human Rights Commission".

Forty applications for Special Program approval were received in 1985, consisting of twenty-one renewals and nineteen new programs. This represents an increase of 60% over the previous year. While this increase is a welcome indication of progress and improvement in the access to opportunities of disadvantaged groups, it presents new problems for the Commission in that the processing of applications for approval requires an expenditure of staff time and resources currently in scarce supply. As the number of applications increase, it appears likely that these administrative limitations will begin to be seen as an impediment which will ultimately discourage rather than promote the implementation of programs of affirmative action and special measures.

The Commission believes that a more proactive and positive approach is necessary in order to bring about the long term systemic remedies for discrimination which result from appropriate and well planned affirmative action programs. Such an approach would require that time and energy be allocated to the

development of guidelines and program standards, and that staff be available to offer consultation and assistance to those who wish to initiate special programs.

Volunteer Program

As reported earlier, the position of Volunteer Program Manager was lost in June of this year following a half year of uncertainty. Funding for this position had been provided by the Volunteers In Public Service program of the Department of Employment Development and Economic Security. The funding was scheduled to terminate in April; however, vacancies in the Commission's staff-year allocation permitted the extension of the position for an additional three months. Without some assurance of continuity, the recruitment and training of new volunteers seemed inappropriate and the activities of the program were limited to those which could be carried out by volunteers who had been recruited the previous year. After assuming the position of Education Officer at the end of June, Judy Burch managed to ensure the utilization of existing volunteers to a limited extent but has been unable to carry out any further recruitment or training.

In spite of these limitations, 827 volunteer hours have been contributed to the work of the Commission in 1985 by thirteen active volunteers. Projects have included the preparation of 28 public service announcements to be utilized in future education programming, and various speaker presentations.

However, the loss of the Volunteer Program has been a major blow to the educational thrust of the Commission. The School Speakers Project, which was initiated last year, had to be discontinued, and other projects planned for this year could not be implemented. The Commission has continued to request the staff-year required to permit the renewal of this program as an essential and effective part of the education services of the agency.

Regional Offices

Almost since its inception, the Commission has maintained a regional office in The Pas, Manitoba to ensure access to human rights protections for the residents of Northern Manitoba. In October, the Commission was able to offer the equivalent service to the communities in Southwestern Manitoba by locating a full-time Regional Officer in the Brandon Office with a half-time secretary.

An informal reception to announce the official opening was held in Brandon on December 9th. This date was chosen to draw attention to the anniversay of the United Nations Declaration of Human Rights which fell on the following day, December 10th. Speakers included the Premier of Manitoba, The Honorable Howard Pawley; the Attorney-General and Minister Responsible for Human Rights, The Honorable Roland Penner; and other distinguished guests. The reception was well attended by residents of Brandon and the surrounding area.

Figure 1.2.1. (Appendix C) illustrates the increase in the number of intake contacts received from this area of the province over the past five years. Over the same period, the number of possible complaints increased from 29 in 1981 to 49 last year. The staff of the Winnipeg office responded to these inquiries and investigated the complaints by traveling to the communities concerned as required. However, the Commission believed that the inconvenience to Brandon area residents and the high travel costs associated with this manner of service delivery warranted the establishment of a regional office. The government supported this recommendation and office facilities were established late in 1983. With permanent full time staff, the Brandon Office will now provide service to the southwest portion of the province.

Although the number of formal complaints filed with the office in The Pas has not changed significantly over the past several years, there is nonetheless an indication of a growing interest in and awareness of the work of the Commission on the part of residents of Northern Manitoba. The number of inquiries received by this office has increased dramatically from 330 in 1981 to 872 last year.

Figure 1.2.1 illustrates the rate of this increase from year to year.

In addition to its regional offices in Brandon and The Pas, the Commission continues to serve all areas of the province by sending its staff wherever their services are required, and by the provision of toll-free telephone lines.

Proposed New Legislation

Although almost two years have elapsed since the Commission recommended the adoption of the Proposed Manitoba Code of Human Rights, the Government of Manitoba has not yet declared its position with respect to this recommendation. However, many of the concepts and provisions of the Proposed Code have been introduced or are under serious consideration in other jurisdictions.

During the latter part of 1985, the Attorney-General invited the Commission to review the Proposed Code and to make any revisions which appear to be warranted in light of the court decisions and experiences of the past two years. The Legislative Review Committee undertook this task and revisions will be recommended to the board of Commissioners at the January 1986 meeting. Most of the changes being recommended are minor in substance and are intended for clarification only. One modification which is of some significance would eliminate the requirement for prior approval by the Commission for the implementation of affirmative action and other Special Programs. Prior approval could, however, be obtained through the provisions for advisory opinions. The revised wording of the section relating to Special Programs corresponds to that of the parallel provision in *The Charter of Rights and Freedoms*.

The need for new legislation is clear. The present statute has been amended piecemeal several times over the years and this has resulted in ambiguity and inconsistency in some of its provisions. Recent court decisions have also identified problems which require the attention of the legislature. Furthermore, some of the proposed changes reflect the Commission's concern that the legislation is and appears to be as fair to the party accused of discrimination as to the alleged victim. The Commission sincerely hopes that, in the coming year, the Government will come to appreciate these needs and concerns and will introduce the new Code.

Employee Benefit Plan Guidelines

One disappointment of the past year has been the delay in the introduction of regulations for employee benefit guidelines as they are affected by Section 7(2)(a) of *The Human Rights Act*. These regulations are necessary to clarify the conditions under which exceptions will be permitted to the overall prohibition against distinctions on the basis of age, sex, family or marital status, or physical or mental handicap.

Draft regulations were submitted by the Commission to the Government in October of 1984. To date the regulations have not been passed nor has the Commission been advised of the timetable for their consideration.

National and International Events

Claudia Wright completed her term as Vice-President of the Canadian Association of Statutory Human Rights Agencies in May at the conclusion of the Annual Conference and Meeting which was held in Edmonton, Alberta. At the conference, the Manitoba Human Rights Commission assumed responsibility for a workshop on "Human Rights Education" which was chaired by Marek Debicki, Vice-Chairperson of the Commission.

As Manitoba's Official Representative to the Continuing Federal/Provincial/Territorial Committee of Officials Responsible for Human Rights, the Executive Director of the Commission chaired a working group on affirmative action in preparation for a Conference of Ministers Responsible for Human Rights which was held in Ottawa in September. The 1985 Ministerial Conference provided the forum for the consideration and discussion of such issues as affirmative action (employment equity), teaching of human rights, the inclusion of human rights terms and conditions in government contracts, and other important concerns. Ministers also considered matters related to Canada's obligations under international human rights instruments such as the United Nations Convention to Eliminate Racial Discrimination and the Convention to Eliminate all Forms of Discrimination Against Women; as well as Canada's participation in the International Decade of Disabled Persons.

In January, the Executive Director was honoured to represent Manitoba as a member of the Canadian delegation presenting Canada's first report on the Convention to Eliminate All Forms of Discrimination Against Women (CEDAW) to a United Nations Committee in Vienna, Austria. The United Nations Information Service reported that the Committee had described Canada's efforts as "impressive" and "exemplary" and had commended the report for its frankness and wealth of information. It went on to say that "The high standard of equality between sexes in that country however allowed committee members to apply a severe yardstick of criticism in fields where progress was still slow. These included women's representation in public offices, disparity of wages and treatment of ethnic minorities."

Future Directions And Needs

Although the Commission was provided with three additional positions in 1985 to increase its staff complement from 19 to 22 employees, this has not been sufficient to ensure the quality of service and human rights protection which Manitobans deserve. The rate of increase in the complaint backlog has been reduced but the backlog itself continues to grow, as does the need for a greater input of staff-time in other program areas.

The Commission feels that the current situation is totally unacceptable. With the backlog and high caseloads, the average investigation will take more than a year to complete; one education officer does not permit the implementation of even a minimally acceptable education program; and no new positions have been allocated in response to the requirement for increased activity related to the approval and promotion of Special Programs.

In 1970, the government of this province passed *The Human Rights Act* which charges the Commission with the responsibility to administer *The Act*; to consider and approve Special Programs; and to develop and conduct educational programs designed to eliminate discrimination and promote knowledge and understanding of civil and legal rights.

However, the legislation is only one of several tools required to fight discrimination and reduce its effects.

For effective administration and enforcement of human rights legislation and the delivery of these statutorily required programs, the Commission must be able to conduct immediate and thorough investigations, research new investigative techniques, deliver preventative education programs, promote and assist in the development of affirmative action programs, and, in general, take a more proactive approach to its mandate than has been possible in the past. This will require additional personnel, a larger budget, and improved legislation.

Without the commitment of sufficient resources, the promises of freedom from discrimination and equality of opportunity contained in *The Human Rights Act* are undermined. Regardless of the support for these principles expressed in *The Canadian Charter of Rights and Freedoms* and by the Supreme Court of Canada, the fact remains that the rights of citizens cannot be guaranteed with words alone.

The Manitoba Human Rights Commission believes that every effort must be undertaken to ensure that the priorities of Government reflect a commitment to the protection of these basic human rights, and that this must be the focus of the Commission and all concerned organizations and individuals over the coming year.

APPENDIX A

Updates on Appeals or Boards of Adjudication, and Current Boards of Adjudication

The following are matters which have been heard by a Board of Adjudication prior to 1985. They are included here to provide an update on developments which may have occurred during 1985, or their current status before the courts.

Appeal: McDonald vs Knit-Rite Mills

(Previously reported in the 1982, 1983 and 1984 Annual Reports)

Background:

Irene McDonald, a cutter-spreader II employed by Knit-Rite Mills, had filed a complaint alleging that she had been placed in a lower classification than male employees, was receiving a lower rate of pay and was ultimately laid off because of her sex. The matter was investigated and the evidence supported the allegation. A satisfactory settlement could not be negotiated and the matter was referred to a Board of Adjudication. Professor Jack London was appointed by the Attorney-General to adjudicate the complaint and the hearing began in December, 1982.

In December, 1983, Professor London delivered his decision. He found that the complainant had been a victim of systemic discrimination in that the sex of a worker in the cutting room had been a determining factor in starting rates of pay, job assignments and pay increases prior to introduction of the classifications, and the classification had directly resulted from these earlier forms of sexual discrimination. He therefore ruled that the classification of Ms. McDonald and her subsequent layoff had been discriminatory.

He ordered that Knit-Rite Mills pay to Irene McDonald the amount of wages lost as a result of the lower classification, that she be compensated for wages lost during the period she was laid off and that she be reinstated in the higher classification. Knit-Rite Mills Limited filed an appeal against this order in the Court of Queen's Bench.

1985 Update:

The appeal was heard by Mr. Justice Scollin, of the Court of Queen's Bench, and a decision was rendered May 1, 1985, dismissing the Company's appeal. Following the decision, the parties agreed as to the remedy and Ms. McDonald was paid compensation in net lost wages of $10,417.05.

Appeal: Manitoba Food and Commercial Workers' Union vs Canada Safeway Limited

(Previously reported in the 1983 and 1984 Annual Reports)

Background:

The Manitoba Food and Commercial Workers' Union filed a complaint against Canada Safeway Limited alleging that the respondent's "No Beards Policy" discriminated against male employees, who wore beards, on the basis of their sex. The matter was investigated and the evidence supported the allegation. Conciliation was attempted, but was unsuccessful in resolving the complaint. The Commission requested the Attorney-General appoint a Board of Adjudication to hear and decide the matter. Professor Freda M. Steel was appointed as Adjudicator. Professor Steel delivered her decision on June 6, 1983. She ruled that Safeway's "No Beards Policy" was discriminatory and she ordered Canada Safeway Limited to rescind the policy requiring male clerks to be clean shaven. The respondent appealed the Adjudicator's decision to the Court of Queen's Bench.

The appeal was heard by Mr. Justice Wright of the Queen's Bench Court who rendered a decision on March 28, 1984 in which he allowed the appeal. While he agreed that a "No Beards Policy" was discriminatory on the basis of sex, he concluded that on the facts of this case, the policy was a reasonable occupational qualification in accordance with the exception provided in Section 6(6) of *The Act*. The Commission filed an appeal in the Court of Appeal where it was heard and dismissed through a decision delivered October 17, 1984. The Court held that a "No Beards Policy" was a grooming policy and was not discriminatory because of sex. The Commission, in reviewing the Court of Appeal's decision, concluded that the learned Court of Appeal failed to consider the discriminatory impact of employment policies based on characteristics that are exclusive to one sex, such as beards or pregnancy. The Commission therefore applied for Leave to Appeal the decision to the Supreme Court of Canada.

1985 Update:

On February 11, 1985, the Commission's application for Leave to Appeal the decision to the Supreme Court of Canada was denied by Supreme Court Justices McIntyre, Wilson and Estey.

Appeal: Govereau & Janzen vs Platy Enterprises Ltd. (Pharos Restaurant)

(Previously reported in the 1984 Annual Report)

Background:

Tracy Govereau and Diana Janzen, employed as waitresses at Pharos Restaurant, alleged that during their employment, the cook of the restaurant continually harassed them by grabbing and touching their bodies and making lewd comments about their anatomy. They alleged that in spite of their protests, both to the cook and to the owner, the behaviour continued. Tracy Govereau alleged that her hours were reduced and that she was ultimately terminated by her employer because she complained to the management about the harassment. Diana Janzen alleged that she was forced to terminate her employment because of the cook's behaviour toward her. Both women alleged that they had been subjected to discriminatory conditions of employment and, ultimately, had been terminated because of their sex.

The investigation results appeared to support the complaints and conciliation was attempted but was unsuccessful. As a result, the Attorney-General was requested to appoint a Board of Adjudication to hear and decide the matter. Mr. Yude Henteleff, Q.C., was appointed as Adjudicator and hearings were held April 2nd and 3rd and May 31, 1984.

1985 Update:

On April 26, 1985, Mr. Henteleff delivered his decision on these cases. He found that the complainants were sexually harassed by the cook and that the employer was made aware of the harassment but failed to take any reasonable steps to assure that the workplace would be free from fear of sexual harassment. Mr. Henteleff found the Company and the cook jointly and severally liable and ordered that Diana Janzen be compensated $480.00 for lost wages and $3,500.00 for damages. Tracy Govereau was awarded $3,000.00 lost wages and $3,000.00 general damages. Platy Enterprises Ltd. was ordered to provide the Commission with a letter agreeing to comply with *The Act* and, further, that under the direction of the Commission and within such time as the Commission determined, Platy Enterprises Ltd. was to establish and maintain, in all of its restaurant premises, a program which would reasonably ensure that the restaurants would remain free of sexual harassment.

The respondent subsequently appealed the Adjudicator's decision to the Court of Queen's Bench. The appeal was heard before Justice J. Monnin on September 11, 1985. The respondent's appeal of the Adjudicator's decision was based on the scope and constitutionality of *The Act* itself. The respondent also argued that the quantum of damages assessed by the Adjudicator was excessive.

Justice Monnin rejected all the respondent's grounds of appeal but reduced the awards. Diana Janzen was awarded lost wages in the sum of $480.00 and damages for loss of self-respect and hurt feelings in the amount of $1,000.00. Tracy Govereau was awarded $500.00 for lost wages and $1,500.00 for hurt feelings and loss of self-respect.

The respondent had raised in their argument the right of the Board of Adjudication to order that respondents provide a letter of undertaking to comply with and establish a program acceptable to the Human Rights Commission. Justice Monnin found the order to be reasonable and one which respondents should wish to comply with but found it to be outside the scope of *The Act*. He varied this order by ordering the respondent to ensure that the restaurant premises remain free of sexual harassment.

As of the date of writing of this report, no notice had been served by the respondent as to whether or not they intend to appeal Justice Monnin's decision.

Appeal: Ogelski vs City of Winnipeg (Police Department)

(Previously reported in the 1984 Annual Report)

Background:

Mr. Edward Ogelski filed a complaint alleging he was being forced to retire from his position as Deputy Chief with the City of Winnipeg Police Department, because of his age, based on a City by-law requiring all police officers to retire at age 60. He maintained that his employment should be continued beyond age 60 as his physical and mental health were good and as he satisfactorily performed his duties as Deputy Chief. The investigation results appeared to substantiate the complaint. However, since a voluntary settlement could not be negotiated, the Attorney-General was requested to appoint a Board of Adjudication to hear and decide the complaint. Mr. Vic Savino was appointed as Adjudicator and hearings were held in September, October and December, 1984.

1985 Update:

Mr. Savino delivered his decision on March 1, 1985. He ruled that Edward Ogelski had been discriminated against when he was forced to retire from his position of Deputy Police Chief with the City of Winnipeg Police Department at the age of 60.

The Adjudicator rejected the respondent's argument that retirement at age 60 is a reasonable occupational requirement for all police officers regardless of rank. He stated that it is the duties of the particular position and the practical realities of the work involved which determine whether retirement at 60 is a reasonable requirement. Mr. Savino concluded on medical evidence that a healthy individual in his early 60's could adequately discharge the duties required of a Deputy Chief and that medical tests were available to adequately determine health without having to rely on age. The Adjudicator ordered that Mr. Ogelski be reinstated to his position as Deputy Chief and that he undergo regular medical examinations. In addition, the respondent was directed to compensate Mr. Ogelski for the difference between pension payments he received since his forced retirement and the salary and benefits he would ordinarily have received.

The respondent appealed the Adjudicator's decision to the Court of Queen's Bench. The appeal was heard by Mr. Justice Wright who rendered a decision on October 15, 1985 in which he dismissed the appeal. He was satisfied the Adjudicator made no significant error of fact or law in arriving at his decision. The respondent subsequently filed an appeal in the Court of Appeal. As of the year's end, this appeal had not been heard.

Appeal: Stevenson and Linklater vs The Winnipeg Sun and Peter Warren

(Previously reported in the 1984 Annual Report)

Background:

Chief Louis Stevenson, representing the Peguis Indian Band, and Kenneth Linklater, a private citizen, filed complaints against the Winnipeg Sun and columnist Peter Warren, respectively, alleging that two columns written by Peter Warren were racist. The complainants alleged that the articles in question exposed Native Indians to hatred and indicated discrimination against Native Indians. On reviewing the contents of these articles, the Commission was of the view that they contained words and phrases which negatively stereotyped all Native persons and exposed them to hatred and discrimination. Conciliation was undertaken and the Winnipeg Sun agreed to a voluntary settlement.

Conciliation was also attempted with Peter Warren, but was unsuccessful. As a result, the Commission requested the Attorney-General appoint a Board of Adjudication to hear and decide the complaint against Mr. Warren and Mr. Jack Chapman, Q.C., of Winnipeg, was appointed as Adjudicator. A preliminary motion was heard February 27th, 1984, concerning the question of jurisdiction. Counsel for Peter Warren argued that the newspaper article did not fall within the prohibition of Section 2 of *The Act*.
Mr. Chapman rendered his decision on March 12, 1984, and ruled that he had jurisdiction to proceed. Mr. Warren appealed the Adjudicator's decision on the question of jurisdiction and the appeal was heard in Queen's Bench Court on June 5, 1984, before Justice Morse. Justice Morse ruled that the wording of Section 2 was not broad enough to include newspaper articles, and that, therefore, the Board of Adjudication had no jurisdiction to proceed.

1985 Update:

The Commission filed an appeal in the Manitoba Court of Appeal. On February 18, 1985, Court of Appeal Justices Matas, Huband and Philp rendered the decision that Section 2(1) of *The Human Rights Act* does not extend to newspaper articles or editorials. The Commission decided not to appeal this decision to the Supreme Court.

Appeal: Brooks, Allen and Dixon vs Canada Safeway Ltd.

(Previously reported in 1984 Annual Report as Brooks vs. Canada Safeway)

Background:

Susan Brooks, Patricia Allen and Patricia Dixon filed complaints alleging that the employee disability benefit plan provided by the company discriminated on the basis of sex and family status by disqualifying pregnant women from receiving benefits. They alleged that, under the terms of the plan, no benefits are payable during a seventeen week period commencing ten weeks prior to the expected week of confinement and ending six weeks after the week of confinement. Ms. Brooks experienced pregnancy-related disabilities and initially received benefits. However she alleged that ten weeks before the expected week of her confinement, her disability benefits ceased. Ms. Allen and Ms. Dixon experienced pregnancy-related disabilities which commenced within ten weeks prior to their expected weeks of confinement and Ms. Allen

continued to experience pregnancy-related disabilities following the birth of her child. All three were denied eligibility for benefits. In contrast, employees who experienced other forms of disability continued to be eligible for benefits under the plan throughout the period of their disability.

Since the investigation revealed an apparent contravention, conciliation was attempted but was unsuccessful. The Commission requested the Attorney-General to appoint a Board of Adjudication to hear and decide the complaints, and Mr. J. F. Reeh Taylor, Q.C., was appointed as Adjudicator. It was agreed that the Brooks complaint would be heard and decided first. The decision was delivered on October 26, 1984. Mr. Taylor ruled that the complainant had not filed her complaint within six months of the notification of her ineligibility for benefits and that therefore he had no jurisdiction to deal with the complaint on its merits. He also ruled that, while the evidence clearly established there was indeed discrimination against Ms. Brooks under the terms of the disability benefit plan, the discrimination was by reason of her pregnancy and not by reason of her sex and family status. He noted that pregnancy was not explicitly stated in *The Human Rights Act* as a prohibited ground of discrimination and therefore dismissed the complaint.

The Allen and Dixon cases were heard November 28 and 29, 1984, and a decision rendered February 8, 1985. Although these complaints were held to have been filed in a timely manner, they also failed, according to the Adjudicator, for the same reasons that discrimination because of pregnancy was not equivalent to discrimination because of sex and/or family status. The Commission filed an appeal of the decisions in all three cases.

1985 Update:

The appeal was heard by Mr. Justice Vern Simonsen of the Court of Queen's Bench who rendered a decision on November 27, 1985, in which he denied the appeal. He agreed with the Adjudicator that there was discrimination against the complainants by reason of their pregnancy, but not by reason of their sex or family status. The Commission filed an appeal to the Court of Appeal. As of the year's end, this appeal has not been heard.

(Note: Complaints were also filed against Dominion Life Assurance Company, the underwriters of the benefit plans. It was agreed at adjudication that these complaints would be adjourned pending a final determination of the issues in the Canada Safeway complaints.)

Appeal: Dakota Ojibway Tribal Council vs Jean Bewza & Carl Kotyk (Highland Park Motor Lodge, Brandon)

(Previously reported in the 1984 Annual Report)

Background:

The Dakota Ojibway Tribal Council, a Native organization representing eight Indian bands in Manitoba, alleged that the respondents discriminated against Jacqueline and Angela Paishk, Lisa and Mary Copenace, and Laura and Ramona Bird, Native women, while they were guests in the respondents' motel. They alleged the women were discriminated against in the provision of a service without reasonable cause because of their race and colour. During the women's stay at the motel, a verbal and physical altercation erupted between the Paishk's and Ms. Bewza when she observed them utilizing a motel towel to wipe rain water from their car. In the course of the altercation, Ms. Bewza used racially derogatory language toward the Native women and ordered them all to vacate the Lodge.

The investigation results appeared to confirm that the women were subjected to racially abusive language and treatment in the course of their stay at the motel. Conciliation was attempted, but was unsuccessful. As a result, the Commission requested the Attorney-General appoint a Board of Adjudication to hear and decide the matter. Mr. Aaron L. Berg was appointed Adjudicator and a decision was delivered on April 27, 1984.

The Adjudicator accepted the evidence of the Native women and concluded that during their stay at the respondents' motel, they were subjected to racially derogatory remarks and discriminatory treatment. Mr. Berg ordered the respondents to pay general damages of $600 each to all but Laura Bird and to pay Ms. Bird $100. He also directed the respondents to file a letter of undertaking to abide by the terms of *The Act* in future. The Adjudicator's decision was appealed by the respondents to the Court of Queen's Bench.

1985 Update:

The appeal was heard by Mr. Justice J. Hanssen, Court of Queen's Bench, who rendered a decision on April 30, 1985 in which he accepted the ruling of the adjudicator and denied the appeal. The respondents filed an appeal to the Court of Appeal where it was heard and allowed through a decision delivered November 29, 1985. Mr. Justice Kerr Twaddle, writing for the Court of Appeal, said that Ms. Bewza's actions and comments

toward the Native women did not constitute a discrimination with respect to the provision of services. The ruling also criticized the Commission and the Board of Adjudication for their procedures in dealing with the complaint and challenged several aspects of the enforcement process. The Commission, in reviewing the Court of Appeal's decision, concluded that the decision could have serious implications as a result of the narrow interpretation of Section 3 of *The Act* and the restrictive requirements implied for the investigative process. The Commission therefore applied for Leave to Appeal the decision to the Supreme Court of Canada. As of the year's end, the Leave to Appeal had not been heard.

Note: In a separate complaint, the Dakota Ojibway Tribal Council had alleged that the Highland Park Motor Lodge had denied hotel accommodations to Mr. and Mrs. Terry Bearchief, a Native couple from Alberta, because of their race and colour. This complaint also went to adjudication and it was reported in the 1984 Annual Report that the adjudicator found in favour of the complainants and ordered the respondents to refrain from any further contraventions of *The Act* and to sign a letter to the Commission confirming their intention to comply with the provisions of *The Act*. This decision was appealed by the respondents and, as the grounds for appeal of this decision is also one of the grounds for appeal of the decision in the Dakota Ojibway Tribal Council vs. Jean Bewza and Carl Kotyk complaint filed on behalf of Copenace, Bird, et al (reviewed above), it was agreed that this would be adjourned sine die.*

*for an indefinite period, without a date being set.

Adjudication (Update)

Makara vs Payfair Stores (Mike Zeid)

(Previously reported in the 1984 Annual Report)

Background:

Cindy Makara, employed as a cashier, alleged that her employer, Othman "Mike" Zeid, of the St. Matthews Avenue, Winnipeg, Payfair Store, discriminated against her because of her sex. Ms. Makara stated that Mr. Zeid verbally and physically sexually harassed her during the period of her employment by him. Ms. Makara further stated that she rejected Mr. Zeid's advances, and believed that this rejection resulted in Mr. Zeid's subsequent termination of her employment. The investigation results appeared to support the complainant's position and conciliation was attempted, but was unsuccessful. The Commission requested the Attorney-General appoint a Board of Adjudication to hear and decide the complaint. Mr. Yude Henteleff, Q.C., was appointed Adjudicator and hearings were held on April 30 and May 1, 1984.

1985 Update:

In a decision delivered on July 26, 1985 Mr. Henteleff found that the respondent was persistent in his attempts to establish and maintain social contact including that of a sexual nature with the complainant. However, he stated that the complainant was inconsistent in her response to his advances, at times rejecting them and at times consenting to them. Therefore, he concluded that the behaviour could not be defined as "unwanted". The Adjudicator found no evidence of an implied or expressed threat or reprisal by the respondent. Instead, he found that Mr. Zeid was justified in terminating Ms. Makara's employment on the basis of an absence from her employment for which there appeared to be no medical justification.

Having found that there was no violation of *The Manitoba Human Rights Act*, Adjudicator Henteleff dismissed the complaint.

Current Boards of Adjudication

Wilson, Swaenepoel & Olynik vs Elsie and Albert Henry (Kingsway Trailer Court, Brandon)

Allegation:

Edna Wilson and Swaenepoel filed a complaint alleging that Albert and Elsie Henry, owners of Kings Trailer Court, refused to allow the complainants and a third woman, to jointly occupy a mobile home in the trailer park because of the women's marital and family status. Wilson and Swaenepoel were attempting to purchase the trailer from owner, Grant Olynik, and to occupy the trailer on its present lot at the Kingsway Trailer Court. Grant Olynik, the owner of the trailer, alleged that he was indirectly discriminated against by the respondents since, because of their discriminatory actions, the sale of the trailer could not be completed.

As the investigation results appeared to support the complaints, conciliation was attempted but was unsuccessful. As a result, the Attorney-General was requested to appoint a Board of Adjudication to hear and decide the matter.

Decision:

Mr. Aaron Berg was appointed Adjudicator and hearings were held on May 2nd and 3rd, 1985. In his decision, Mr. Berg found that Edna Wilson and Anne Swaenepoel were discriminated against. He ordered the respondents to apologize in writing to Edna Wilson and Anne Swaenepoel for their discriminatory conduct. He also ordered that they provide the Commission with a letter of compliance to *The Act*. He ordered that they pay Edna Wilson the sum of $621.65 by way of reimbursement to her for expenses incurred by reason of their contravention of *The Act*. He further ordered that they pay Wilson and Swaenepoel exemplary damages in the amount of $250.00 each.

With respect to Grant Olynik, the Adjudicator ruled that he was not the direct victim of the discriminatory act of the respondents in that the target of the Henrys' prohibited views were the complainants, Wilson and Swaenepoel. The Adjudicator found that *The Manitoba Human Rights Act* did not provide protection to persons who are indirectly affected by the discriminatory act of others. He found that since Olynik himself had not been "discriminated against", that his situation did not fall within the purview of *The Human Rights Act*. Therefore his complaint was dismissed. Neither the Commission nor the respondents appealed the Adjudicator's decision.

Irving (Also Known as Joel) vs Gerry Medland

Allegation:

Kathy Irving, employed as a secretary, alleged she was subjected to sexual harassment by her employer, Gerry Medland. Ms. Irving stated that Mr. Medland asked her to come to Winnipeg from Brandon to take notes at business meetings he was attending regarding an apartment hotel project in Brandon. When she arrived in Winnipeg, Mr. Medland told her she would be sharing his hotel room. She stated that he drank heavily and appeared in front of her in the nude in his hotel room, that he tried to persuade her to have sex with him, that he attempted to hug and kiss her and that he then told her to leave when she protested.

The investigation results appeared to support the complainant's position and conciliation was attempted, but was unsuccessful. The Commission therefore requested the Attorney-General appoint a Board of Adjudication to hear and decide the complaint.

Decision:

Mr. Aaron Berg was appointed as Adjudicator and hearings were held on January 3rd and 4th, 1985. A decision was rendered on February 8, 1985.

Mr. Berg concurred with past decisions that human rights legislation, in prohibiting discrimination in the workplace on the basis of sex, includes protection against sexual harassment. He found that Mr. Medland's physical and verbal conduct constituted sexual harassment and that Ms. Irving was forced to terminate her employment as a result of this conduct. He also concluded that she "suffered some considerable emotional distress" as a result of the incident.

As a remedy, Mr. Berg ordered that Mr. Medland provide Ms. Irving with a letter of apology with respect to his conduct and that he pay to her the sum of $1,577.60, consisting of lost wages of $304.00, bus fare of $23.60, and general damages of $1,250.00. The order was not appealed by any of the parties to the complaint.

Special Programs

(Affirmative Action)

Obirek, Apsit and Gaffrey vs Manitoba Human Rights Commission

Background:

In September 1984, the Manitoba Government's Department of Natural Resources applied to the Commission for approval of an affirmative action plan for Native Indians whereby they would be given preference in the granting of wild rice licenses over a period of two years. The Commission reviewed the particulars of the application and approved it under Section 9 of *The Human Rights Act* as a Special Program "designed to promote the socio-economic welfare and equality and status of a disadvantaged class of persons defined by...race".

On February 22, 1985, Mr. Eugene Obirek filed an Originating Notice of Motion in the Court of Queen's Bench seeking an Order to quash the decision made by the Human Rights Commission on the grounds that the Commission's procedure for approval of the program was contrary to the principles of natural justice. Mr. Obirek and the Manitoba Rice Farmers Association had a complaint pending before the Commission and they alleged that their rights were affected by the Commission's decision and that therefore they should have been entitled to notice of the Special Program application and a public hearing.

Since the Commission's approval of the Special Program was not retroactive, the Commission was satisfied that Mr. Obirek's complaint would not be affected. However, the Commission reviewed their procedures and felt that some revisions should be made to observe the principles of procedural fairness. Accordingly, revisions to the approval procedures were made to provide public notice of Special Program applications and an opportunity to interested parties to make written or verbal submissions at a public hearing, where warranted. Approval of the Natural Resources program was suspended and the application reconsidered in accordance with the revised procedures. Mr. Obirek's Court proceedings were therefore adjourned sine die*. Following a public notice, the Commission held a public hearing where submissions were heard from several parties including Counsel for Mr. Obirek and the Manitoba Rice Farmers Association. On careful consideration of all the submissions, the Commission approved the program under certain specified conditions.

Following the Commission's approval of the affirmative action plan, on July 2, 1985, Alfred Apsit and Laurie Gaffray, representing themselves and the Manitoba Rice Farmers Association, filed an Originating Notice of Motion again asking the Court to quash the Commission's decision, again alleging that it was made contrary to the principles of natural justice.

Specifically, they claimed that the Commission should have heard evidence under oath and provided them with an opportunity to cross-examine on the evidence. They also alleged that the Commission's approval of the program was unconstitutional in that the affirmative action plan was contrary to the equality provisions of *The Charter of Rights*.

The motion was heard before Mr. Justice Jewers who ruled that the Commission was acting as a purely administrative and not as quasi-judicial tribunal when approving a program under Section 9. As such, the Commission must act "fairly" in rendering its decision. The Court ruled that the Commission "acted more than fairly" in that all interested parties were advised of the Special Program application, a hearing was held and interested parties, including the applicants, were given a full opportunity to respond to the plan, both orally and in writing. The applicants had also alleged that the Commission had approved the plan simply to circumvent Mr. Obirek's complaint. The Court ruled that the Commission had acted properly and in good faith and that approval of the program had no bearing on Mr. Obirek's complaint.

*for an indefinite period.

With respect to the applicants' *Charter* challenge, the Court stated that the Special Program approved by the Commission was, on its face, inconsistent with Section 15(1) of *The Charter* and that there is an onus on the Commission to demonstrate that the plan which it approved falls within the exception provided by Section 15(2) of *The Charter*. Justice Jewers concluded that he did not have enough evidence to determine if the beneficiaries of the plan are "disadvantaged individuals" and that the affirmative action plan would "ameliorate their conditions". He therefore ordered a trial of the issues to determine:

1) whether the affirmative action program complied with Section 15(2) of *The Charter* and;

2) if not, whether Section 9 of *The Manitoba Human Rights Act* was a "reasonable limit" within Section 1 of *The Charter*.

As of the date of this report, no date for the hearing has been set.

Supreme Court of Canada Intervention: Theresa O'Malley and The Ontario Human Rights Commission vs Simpsons-Sears

(Previously reported in the 1983 and 1984 Annual Reports)

Background:

The Manitoba Human Rights Commission joined the Alberta and Saskatchewan Human Rights Commissions in intervening in the case before the Supreme Court because of the important human rights principles at issue. Ms. O'Malley had filed a complaint based on religious discrimination with the Ontario Human Rights Commission when she was fired for refusing to work on Saturdays. She contended that this was against her religion. The matter was heard by a Board of Inquiry in Ontario and subsequently appealed to the Courts of that province. The Ontario Human Rights Commission asked for Leave to Appeal the Ontario Court of Appeal decision to the Supreme Court of Canada. Leave to Appeal was granted by The Right Honourable Bora Laskin, (then Chief Justice of Canada), Mr. Justice McIntyre and Madam Justice Wilson on the basis that the case involved a matter of national interest.

1985 Update:

The appeal was heard by the Supreme Court on January 30 and 31, 1985. The Court decision, rendered on December 17, 1985, found in favour of the complainant and the Ontario Commission.

The Court held that intention is not essential to a finding of discrimination and that an action can be discriminatory if it has an adverse impact or effect on a particular group. In this case, the Court found that, even though the company did not intend to discriminate, the rule that all employees must work Saturday shifts was discriminatory in its impact on Seventh Day Adventists and on Ms. O'Malley in particular, based on religion.

The Court also found that where a work rule has such a discriminatory impact, there is a duty on the employer to accommodate the individual(s) negatively affected. In this case, they found that the employer had made no attempts to accommodate Ms. O'Malley and also could not demonstrate that accommodating her would pose an undue hardship on the business. As a result, Simpsons-Sears was directed to pay Ms. O'Malley compensation in the form of lost wages.

K.S. Bhinder & The Canadian Human Rights Commission vs Canadian National Railway Company

Background:

This case was heard by the Supreme Court of Canada in conjunction with the O'Malley case (reported above) in view of the similarity of issues involved. The Manitoba Human Rights Commission's argument on the O'Malley intervention was therefore also considered in the Bhinder case.

Mr. Bhinder was terminated from his employment as an electrician with C.N.R. when the company instituted a rule requiring the wearing of hard hats on the job site. As a practising Sikh, Mr. Bhinder could not wear anything over his turban nor could he remove it. He filed a complaint with the Ontario Human Rights Commission alleging his termination was based on his religion and was therefore discriminatory. Following a Court of Appeal, the matter was ultimately appealed to the Supreme Court of Canada where the Court found in favour of C.N.R.

As in the O'Malley case, the Court held that intention was not essential to a finding of discrimination. However, *The Canadian Human Rights Act under which this complaint was filed, unlike The Ontario Human Rights Code*, created an exception where an exclusion from employment was based on a bona fide occupational requirement. The Court found C.N.R.'s hard hat policy was a bona fide occupational requirement as it effectively reduced the risk of injury to employees. Because the statute created a clear exception for bona fide occupational requirements, the Court ruled that the hard hat rule was not discriminatory, even though it may have an adverse impact on Bhinder and other religious Sikhs.

(Note: The different results in Bhinder and O'Malley were based not on a different interpretation of human rights principles, but rather on the specific provisions of two different statutes.)

Summary Report of Legal Proceedings 1985

Carried over from 1984:	
Complaint proceedings	16
Other proceedings	2
Total	18
Proceedings initiated in 1985:	
Complaint proceedings	19
Other proceedings	3
Total	22
Dispositions — 1985:	
Resolved, no hearing	3
Finding of discrimination	2
Dismissed, no contravention	3
Total	8
Matters outstanding at year end:	
Complaints referred to adjudication	18
Complaints before the Court of Queen's Bench	1
Complaints before the Court of Appeal	7
Appeals to the Supreme Court of Canada	1
Other proceedings in progress	3
Total	30

Note: In some cases, more than one complaint will be combined for the purpose of a hearing.

APPENDIX B

Sample Cases

The following are provided as some examples of the types of issues that can be the subject of complaints, the types of voluntary settlements that can be achieved, and some reasons for dismissal.

These examples are in no way indicative of the current caseload or the relative numbers of settled and dismissed cases. Statistical information regarding the Enforcement Program can be found in Appendix C.

Each complaint is assessed on its own merits and settlements outlined in the following pages should not be considered as representing a particular trend or current norm.

Employment (Termination)/Age

Allegation:

The complainant, who was under the age of majority, filed a complaint alleging that his employment was terminated because of his age.

Investigation:

The investigation established that the complainant applied for a position as a draftsperson for the summer months. He was hired and reported for work on the designated day. On his first day of employment it was requested that he complete some routine forms. Upon reviewing the forms, the Personnel Officer learned the complainant was not yet eighteen years of age. On the basis of a company policy prohibiting employment of anyone under the age of eighteen, the Personnel Officer terminated the complainant's employment.

Settlement:

The investigation confirmed the allegation and conciliation was undertaken. The company agreed to pay the complainant the wages he would have earned, had he been employed with them for the summer months, that is, $2,039.96, and provide him with a letter of apology. The company also provided the Commission with written confirmation that the age restriction policy was abolished. The complainant indicated his satisfaction with this resolution, and the Commission closed the case as settled.

Employment (Terms and Conditions and Termination)/ Religion

Allegation:

The complainant, a member of the Worldwide Church of God, filed a complaint against his employer alleging that his employer instructed him to either work Saturdays or resign from his employment position. The complainant's religious beliefs, which had been conveyed to his employer, prohibit him from working on the Saturday sabbath.

Investigation:

The investigation confirmed that the complainant had been instructed to work Saturdays, contrary to his religious beliefs, or to resign his employment. The respondent had initially accommodated the complainant's request to refrain from Saturday employment, but subsequently rescinded that accommodation alleging undue hardship on staff and administration in filling the weekend shifts. The employer suggested that the complainant could alter his employment from full-time to part-time employment and thus not be required to work Saturdays. This was not acceptable to the complainant.

Settlement:

Conciliation was initiated as the evidence appeared to indicate that the accommodation of the complainant's religious beliefs would not have resulted in undue hardship to the employer. The respondent agreed to permit the complainant to continue full-time employment and to exempt him from working on Saturdays. The respondent provided to the Commission a letter of declaration of compliance to *The Manitoba Human Rights Act* in this regard. The complainant indicated his satisfaction with this settlement, and on that basis the Commission closed the case as settled.

Employment (Termination)/ Physical Handicap (Back Injury)

Allegation:

The complainant filed a complaint of discrimination alleging that he had been terminated from his employment because he had injured his back.

Investigation:

The investigation determined that the complainant had, in fact, injured his back while he was employed part-time by the respondent. The investigation also found that the complainant had previously injured his back while working for the same employer and that he had been out of work for a short period of time and subsequently returned to work.

After this second injury, the complainant was absent from work for approximately 3 months and was under doctor's care. When his doctor permitted him to return to his original work in the warehouse, his employer informed him that there was no longer any employment for him. He was told by the respondent that two temporary replacements had been hired and that the company had no intention of terminating them.

The respondent argued that the complainant had been absent during peak periods. They felt they could not leave a position open but had to hire additional temporary help to deal with the excessive workload. However, the investigation revealed that temporary help was common in peak periods in any event and the complainant's position was not filled permanently until after he indicated he was fit to return to work. The employer had decided not to continue his employment, in spite of his doctor's certificate of fitness, because they feared he could be reinjured.

Settlement:

As the evidence appeared to support the complaint, the respondent was invited to consider a voluntary settlement of the case. As a final settlement, the respondent agreed to pay the complainant a lump sum payment for lost wages and damages in the amount of $2,018.88. All parties to this complaint indicated that this was a satisfactory resolution of the matter and the Commission closed the file as settled.

Employment (Hiring)/ Physical Handicap

Allegation:

The complainant, who is deaf and mute, alleged that he was not hired for an entry-level position with the company because of his physical disability, contrary to *The Human Rights Act.*

Investigation:

The investigation revealed that the respondent advertised for someone to fill an entry-level position, but intended to hire a person who could be cross-trained to do other jobs. The company also wished to hire someone who would eventually be promoted to a higher position within the company. The investigation revealed that a hearing person, who had less related-work experience than the complainant, was hired for the position and that the complainant's disability influenced the respondent's decision not to hire him. The evidence showed that the complainant was physically capable and had the necessary work experience to enable him to perform the entry-level position without posing an undue hardship on the employer. Minor changes within the company would have been required, but there was no evidence that productivity would have been compromised. In addition, the respondent confirmed that the complainant could do the entry-level job without risk to himself or other employees.

Settlement:

Since the evidence seemed to show that no attempt was made to accommodate the complainant's disability at the entry level position, and since it appeared that the complainant was refused employment because of his disabilities, the Commission attempted to bring about a voluntary settlement of the matter. The respondent apologized to the complainant, offered him compensation in the amount of $1,000 and provided the Commission with a letter of compliance to *The Act.* Since the matter appeared to be resolved to the satisfaction of all parties, the case was considered settled, and the file was closed.

Employment/ Physical Handicap (Speech Impediment)

Allegation:

The complainant, employed by the respondent as a Nursery School teacher, suffered from a speech impediment. The complainant alleged that she applied and was denied consideration for a position as a teacher in the Language Disorder class because of her impediment. Her employer took the position that the complainant would be "an inappropriate language model" for the class in question.

Investigation:

The investigation established, on assessment of the program and in discussion with experts in that specific field, that to hire the complainant as a teacher in the Language Disorder class would not be in the best interest of the students. Further, the examination of the complainant's speech impediment by a specialist endorsed the decision of the employer in that her "communication disorder could interfere with the effectiveness and efficiency of her provisions of language models in the context of a language disorder class".

Disposition:

The Commission determined that the decision of the respondent to deny the complainant the Language Disorder teaching position was reasonable under Section 6(6) of *The Human Rights Act* and therefore dismissed the complaint.

Employment (Hiring)/ Physical Handicap and Age

Allegation:

The complainant filed a complaint against a fire department alleging he was denied employment as a fire fighter because of his height, weight, and age.

Investigation:

The investigation established that when the complainant first attempted to apply for employment with the respondent, he was told he was too short. When he inquired about employment the following year, he was advised that the respondent had dropped the minimum height requirement and replaced it with a requirement that a person's weight be in proportion to his height. The complainant then applied, and was advised his weight was greater than it should be for someone of his height, according to the chart used by the respondent. The respondent advised that it was presently reviewing the requirement that weight be in proportion to height with a view to dropping this requirement in future. A Personnel Officer confirmed she made a remark, in the complainant's presence, that there is general deterioration of the human body after the age of thirty. The Personnel Officer maintained she read a study which came to this conclusion. However, she denied both knowing the complainant's age and intimating that the complainant would not be hired as a fire fighter because of his age.

Settlement:

The respondent decided to delete the requirement that weight be in proportion to height and so advised the Commission. The respondent's revisions require that applicants for fire fighters be physically fit and physically capable of performing the duties of a fire fighter as assessed by relevant tests. The complainant was advised of this change in the qualifications. He indicated that as he had obtained alternate employment, he would not reapply for employment as a fire fighter at the present time but might do so in the future. The complainant was satisfied with this resolution and the case was closed as settled.

Employment Termination/ Sex (Sexual Harassment)

Allegation:

The complainant, a cook in a restaurant, alleged that her employer had harassed her in the kitchen by grabbing and touching her body and trying to embrace her while making crude sexual remarks to her. In spite of her protests, the sexual remarks continued and she terminated her own employment because of her employer's behavior.

Investigation:

The respondent denied the alleged sexual harassment but other female employees, past and present, confirmed that they were subjected to similar types of harassment.

Settlement:

The investigation substantiated the complaint and conciliation was initiated. Conciliation was unsuccessful and the Attorney-General was requested to appoint a Board of Adjudication to hear and decide the matter. However before a hearing could be held, the respondent agreed to settlement.

The respondent presented a letter of apology and a cheque in the amount of $1,100.00 covering lost wages and general damages to the complainant. The complainant indicated her satisfaction with this resolution, and the Commission closed the case as settled.

Employment (Hiring)/ Family Status

Allegation:

The complainant alleged that she had been denied employment by a shoe company because her sister was already employed at the same work location.

Investigation:

The investigation revealed that the complainant had applied for a shoe department manager's position with the respondent company. After an interview with the company, the complainant was advised that she was hired and was instructed to give notice to her current employer, which she did. The complainant stated that shortly before she was to start her new job, she was advised by the respondent company that they could not hire her because she already had a sister who was employed at the same work location. The complainant tried to return to her old job but was unable to do so because her position had already been filled.

The investigation also revealed that the respondent shoe company had a lease with a department store which allowed it to share facilities with the department store. The shoe company argued that since they were "guests" in the store, they had to abide by policies set forth by the department store. The shoe company indicated that the department store they shared facilities with had a policy which discouraged the hiring of relatives to work in the same store. As a result, the respondent stated that they advised the complainant that they could not hire her because she already had a relative working within the department store facility.

The investigation also revealed that if the complainant had been hired for the position, she would not have had to work with her sister nor would she have had any authority over her, or vice versa.

Settlement:

Since the evidence revealed that the complainant had been denied employment because of family status, conciliation was initiated. The complainant had been without employment for approximately one month and she indicated that because of what had transpired, she was no longer interested in working for the respondent shoe company. The respondent agreed to provide the complainant with lost wages in the amount of $860.00 gross, which represented what the complainant would have earned in a one month period had she been employed with the respondent company. The respondent further agreed to pay the complainant $100.00 for general damages and also provided the Commission with a written assurance that "Future decisions with respect to employment would not take into consideration any of the prohibited factors under *The Human Rights Act*". The Commission also received assurance from the department store that a revised policy dealing with employment of relatives would not prevent relatives from working in the same store. The complainant indicated her satisfaction with this resolution and the Commission, therefore, closed the case as settled.

Employment (Termination)/ Marital and Family Status and Sex

Allegation:

The complainant, a drill press operator, filed a complaint alleging that her employment was terminated because she was a relative of the plant foreman who was her immediate supervisor, because she was a female in a traditionally male occupation, and because she was living with a man to whom she was not legally married.

Investigation:

The investigation confirmed that the respondent terminated the complainant's employment because she was related to her supervisor. The respondent stated that although he was aware of their relationship at the time of hiring of the complainant, he subsequently became concerned about setting a company precedent of this nature. The investigation did not establish that the complainant's sex or marital status were factors in the respondent's termination of her employment. During the course of the investigation, the respondent hired another drill press operator to fill the complainant's employment position.

Settlement:

As the investigation substantiated that the complainant was terminated from her employment on the basis of family status, that is, her relationship to her supervisor, conciliation was commenced. The complainant requested and received from the respondent a letter of apology, lost wages in the amount of $3,380.08, and $300.00 in general damages. The Commission received from the respondent a declaration of future compliance to *The Act*. As both parties indicated satisfaction with these terms of settlement, the Commission closed the file as settled.

Employment (Termination)/ Marital Status and Race

Allegation:

The complainant, a Caucasian woman, alleged that her employer picked on her and terminated her employment because she was in a common-law relationship with a Black man. She alleged that she was discriminated against because of her marital status.

Investigation:

The investigation revealed that the respondent's attitude toward the complainant changed when she began to date a Black man. The respondent increased her work load, ignored her, and yelled at her in front of other staff for no apparent reason. In addition, he began to request that she serve the Black customers since he felt she "could handle them better than anyone else". It appeared that the respondent had a discriminatory attitude towards non-whites. Witnesses confirmed that he often made racially derogatory remarks about the complainant's fiance and about Chinese and East Indian customers. He instructed the complainant to have her fiance wait outside the store for her. No other staff were given these instructions regarding their friends and relatives. The

respondent also confirmed he told the complainant he disagreed with her decision to live common-law. The respondent stated that the complainant was terminated because he suspected her of theft. There appeared to be evidence to support the termination. However, the evidence also appeared to indicate that the complainant's working conditions were discriminatory because of her relationship with a Black man.

Settlement:

Since the evidence indicated that the complainant was discriminated against, conciliation was commenced. The respondent paid the complainant $800.00 for damages to feelings and self-respect and provided the Commission with a letter of compliance. Both parties indicated satisfaction with the resolution of the complaint, and the file was closed as settled.

Housing/Sex

Allegation:

The complainant applied and was accepted as a tenant. Within three weeks of taking up residence, he was told he would have to vacate as the owner had introduced a new policy that only females could be considered as tenants. The facilities in question were designated as a rooming house which also provided board if requested.

Investigation:

The investigation established that the respondent placed an advertisement in the Winnipeg Free Press, stating "board and room for quiet person", making no restriction on the basis of gender. The investigation also revealed that after being accepted as a tenant and assuming occupancy, the complainant was advised in writing that he was being given a month's notice to vacate the room as the owners had introduced a policy that they would only be renting the rooms to persons of the female gender.

Settlement:

The respondent, being advised of the complaint, withdrew the notice of eviction and compensated the complainant in the amount of $300.00.

Housing/Race, Colour, and Ethnic or National Origin

Allegation:

The complainant, a Native woman, complained to the Commission that on two occasions she attempted to rent an apartment from the respondent. She alleged that on the first occasion the caretaker told her over the phone that the apartment was already rented. On the second occasion, he told her that he would not rent to Natives because they were drunks, had parties, and brought too many people home with them. She alleged that she was discriminated against because of her race, colour, and ethnic or national origin.

Investigation:

The investigation revealed that on two occasions when the complainant contacted the caretaker, the suite had already been rented. However, the evidence showed that during her second contact with the caretaker, the complainant was subjected to racial abuse. When interviewed by the Investigating Officer, the caretaker confirmed that he did make derogatory statements about Natives to the complainant. He told the Officer that he had experienced problems with Native people in the past and that if he had to "put up" with them he would move.

Settlement:

The owner of the apartment block advised that she did not condone the caretaker's conduct, but acknowledged that the caretaker acted in a discriminatory manner towards the complainant. She gave the complainant a letter of apology and paid her damages in the amount of $250.00. She also gave the Commission a letter of compliance in which she assured the Commission that a similar incident would not happen in the future. Both parties expressed satisfaction with the resolution of the matter and the file was closed as settled.

Services/Race (East Indian)

Allegation:

The complaint originated as a result of an experience by an out-of-town visitor to Winnipeg, in the course of a cab ride from his hotel to the Winnipeg Airport. The Commission was informed that the cab driver, despite being requested to refrain, continually expressed derogatory comments directed at East Indian employees and the public at large who were of East Indian origin.

Investigation:

The investigation established the identity of the cab company and the operator. The driver, no longer an employee of the company, denied the allegation. However, the respondent acknowledged the complainant's detailed recollection of the experience and agreed that consideration would have to be given to ensure that operators would refrain from such behaviour in the future.

Settlement:

The respondent company assured the Commission in writing that it had instructed its drivers to refrain from any such behaviour of the type leading to the complaint, that such behaviour would not be tolerated, and that any reports received suggesting such inappropriate behaviour, would lead to instant dismissal.

The complainant expressed satisfaction with the resolution, and the Commission closed the case as settled.

Services/Source of Income, Without Reasonable Cause

Allegation:

The complainant, a recipient of social assistance, alleged that the manager at a grocery store refused to accept her personal cheque as payment for groceries because the policy of the store was not to accept personal cheques from people who received social assistance. She alleged that she was discriminated against because of her source of income and without reasonable cause.

Investigation:

The investigation revealed that the respondent issued special cards to customers. These cards enabled customers to cash personal cheques and pay for groceries by cheque without going through the sometimes lengthy procedure of having management authorize each cheque. When paying for goods, the customer simply gives the cashier the card and the card number is recorded on the cheque. In determining whether a customer should receive a card, the respondent considered factors such as source of income and amount, credit references, past credit worthiness, etc. The investigation also revealed that the complainant had been granted the use of a card at another store owned by the same respondent. She subsequently moved to another part of the city and applied for and received a card from the store in the above complaint. She used this card to pay for purchases by cheque at the store and none of her cheques were returned N.S.F. On the day that her cheque was refused, she had forgotten her card at home. The respondent refused to accept her cheque, even though she had several pieces of identification and despite the fact that she explained that the store had issued her a card.

Settlement:

It was clear that the complainant had proven her credit worthiness by virtue of the fact that she had been writing cheques to the store for several years, while receiving social assistance, and none of her cheques had been returned N.S.F. Conciliation was therefore initiated. The respondent agreed to restore the complainant's cheque writing privileges. In addition, the respondent provided the Commission with a letter indicating that in the future they would judge each application for credit on its own merit. Since both parties agreed with the resolution of the complaint, the matter was considered settled, and the file closed.

Services/Physical Handicap (Wheelchair)

Allegation:

The complainant, a wheelchair user, filed a complaint of discrimination alleging that she had been denied services at a restaurant because she was in a wheelchair.

Investigation:

The investigation determined that the complainant was in a shopping mall selling lottery football tickets and that she had gone to the respondent's restaurant for lunch. At the restaurant entrance, a male employee, who was cleaning the tables, told her she could not come in and stated "I cannot have that thing in here", referring to the wheelchair.

Settlement:

The investigation established that there was ample room in the front area of the restaurant to accommodate any customer in a wheelchair and conciliation was undertaken. The respondent issued a written declaration of compliance to *The Human Rights Act* and a written apology to the complainant. The respondent also compensated the complainant in the amount of $100.00 for damages to feelings and self-respect. On the basis that all parties expressed satisfaction, the Commission closed the file as settled.

Services/Physical Handicap (Epilepsy)

Allegation:

The complainant, who has Temporal Lobe Epilepsy, filed a complaint alleging he was discriminated against with respect to service in a restaurant because he has epileptic seizures.

Investigation:

The investigation established that the complainant had a grand mal seizure in the respondents' restaurant. The respondents maintained they had no previous knowledge of epilepsy and did not know what was happening when the complainant had the seizure.

They also claimed they did not know what to do and that they were frightened. They confirmed that they advised the complainant that in future he must be accompanied by another person as a condition of providing service to him.

The complainant's physician was contacted for purposes of the investigation. He advised that the complainant's epilepsy is not controlled by the medication he takes. He further advised that the complainant has not behaved in a violent manner while recovering from a seizure. In his opinion it was not necessary for the complainant to be accompanied by another person so as to ensure the safety of other customers and staff in any restaurant in the event the complainant had a seizure.

Settlement:

Since the investigation confirmed differential treatment of the complainant by the respondent because of his epilepsy, conciliation was initiated. Initially the respondent refused to settle so the Commission requested the Attorney-General appoint a Board of Adjudication to hear and decide the complaint. However prior to a hearing, the respondent offered to provide the complainant with a letter of apology and written assurance that the respondent would serve him in future and would not require him to be accompanied by another person. The respondent also gave the Commission written assurance that it would not discriminate against persons because of physical handicaps such as epilepsy. The complainant was satisfied with this resolution and the case was closed as settled.

Services/Physical Handicap (Epilepsy)

Allegation:

The complainant alleged that her driving privileges were revoked on the grounds that she was perceived to have suffered an epileptic seizure. The complainant, who had a history of this disease, had her licence revoked as a result of a report by her physician that the complainant may have suffered an epileptic seizure.

Investigation:

That the complainant had a history of epilepsy and had suffered a "dizzy spell" was not disputed. What was in question was the physician's report to the respondent that the complainant's licence be revoked as she had suffered an epileptic seizure. The evidence revealed that a second opinion secured from a specialist disagreed with the decision of her family physician and recommended that the complainant have her driving privileges reinstated. The evidence further showed that the procedures followed in reviewing the complainant's appeal failed to acknowledge her right to secure an alternate medical opinion. The complainant stated that she had not been advised by her physician of his diagnosis or of his intention to advise the respondent.

The result of an independent medical confirmed the opinion of the specialist that the complainant did not suffer a seizure. It found that although she may have a history of epilepsy, her current medical status did not warrant her licence being revoked.

Settlement:

On the above evidence, conciliation was commenced. Accordingly, the complainant had her licence reinstated with the provision, as set out in *The Highway Traffice Act*, that she submit a medical report prior to renewing her licence. The complainant expressed satisfaction with the resolution and the Commission closed the case as settled.

Services/Sex, Age

Allegation:

The complainant, who is a man, filed a complaint against the local chapter of a national organization alleging that the organization discriminated against women because they were not permitted to hold certain leadership positions in the organization because of their sex. The complainant also alleged that the respondent discriminated on the basis of age since it is one of the criteria used for selecting persons for certain positions in the organization.

Investigation:

The purpose of the organization is to help males, both youth and young adults, develop into responsible members of the community through outings and various activities. The investigation revealed that the by-laws of the organization clearly stated that sex and age should be two of the criteria used to determine eligiblity for certain leadership positions. The by-laws appeared to contravene Section 3 of *The Human Rights Act*.

Settlement:

Through conciliation, the respondent changed its by-laws to comply with *The Act* so that appointment to positions would be based on qualifications without reference to sex. With respect to the age requirement, the respondent maintained that it was reasonably justified in the circumstances, and the Commission concurred. Both parties expressed satisfaction with the resolution of the matter, and the file was closed as settled.

Notices and Signs/Race, Nationality, and Ethnic or National Origin

Allegation:

The complainant, an organization representing the French-Canadian community, filed a complaint alleging that two signs posted on the respondent's Winnipeg residence fence exposed or tended to expose Canadians of French origin to hatred and/or discrimination based on their race, nationality, and ethnic or national origin. The signs stated "Down with the French" and "My prayer is God save the Queen and damn the French".

Investigation:

The investigation confirmed that these signs were posted on the respondent's residence fence and contained such messages which might have exposed or tended to expose Canadians of French origin to hatred and/or discrimination. Shortly after the respondent was served with the complaint, he removed one of the offending signs and altered the other sign to modify its derogatory message.

Settlement:

The complainant stated that the remedial actions taken by the respondent constituted satisfactory resolution to the complaint. The complainant indicated no objection to the remaining modified sign and indicated support of non-derogatory individual freedom of expression. Based on the complainant's satisfaction with this resolution of the complaint, the Commission closed the case.

APPENDIX C:

Statistics

List of illustrations:

1. Intake Statistics
   - 1.1 Total Intake Load 1981-1985
   - 1.2 Combined Intake Load by Regions 1981-1985
   - 1.3 Cases Received by Grounds of Complaint 1981-1985
   - 1.4 Cases Received by Statutory Category 1981-1985
   - 1.5 Breakdown of Cases Received by Statutory Categories and Grounds 1985
   - 1.6 Result of Preliminary Assessment of Cases Received 1985
   - 1.7 Distribution of Cases Received by Geographic Location 1985
2. Enforcement Statistics
   - 2.1 Formal Complaints Received by Statutory Category and Grounds 1985
   - 2.2 Formal Complaints Received by Statutory Category 1985
   - 2.3 Formal Complaints Received by Grounds 1985
   - 2.4 Formal Complaints by Disposition and Statutory Category 1985
   - 2.5 Formal Complaints by Disposition and Grounds 1985
   - 2.6 Year End Caseload Status Report by Regional Office
3. Speaker Service Statistics 1985
   - 3.1 Total Speaker Services Activity 1985
   - 3.2 General Audience Characteristics
   - 3.3 Minority Group Audiences
   - 3.4 Business Audiences

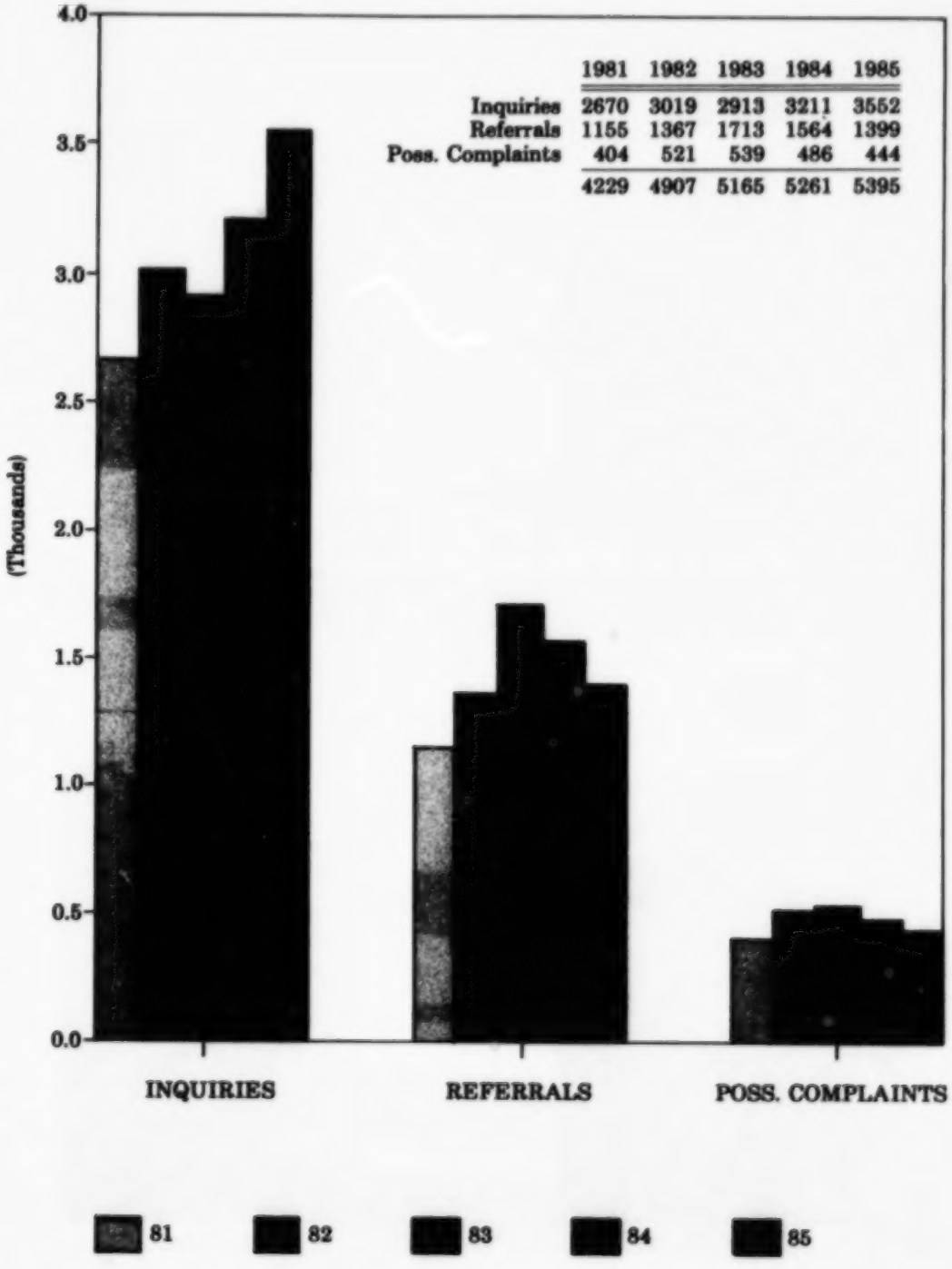
Definitions:

Cases Received	— File opened for preliminary review
Formal complaints	— Formal complaint of discrimination is filed (see Appendix G)
Not pursued	— File closed with no formal complaint filed
Withdrawn	— Formal complaint withdrawn by complainant, no disposition
Dismissed	— Complaint unsubstantiated
Settled	— Conciliation successful, complaint voluntarily resolved to the satisfaction of all parties
Referred	— Conciliation unsuccessful, Commission refers to adjudication
Unresolved	— Conciliation unsuccessful, no referral to adjudication

1. Intake Statistics

TOTAL INTAKE LOAD 1981-1985

Figure 1.1



	1981	1982	1983	1984	1985
Inquiries	2670	3019	2913	3211	3552
Referrals	1155	1367	1713	1564	1399
Poss. Complaints	404	521	539	486	444
	4229	4907	5165	5261	5395

COMBINED INTAKE LOAD BY REGIONS 1981-1985

Figure 1.2.1 — Regional Offices

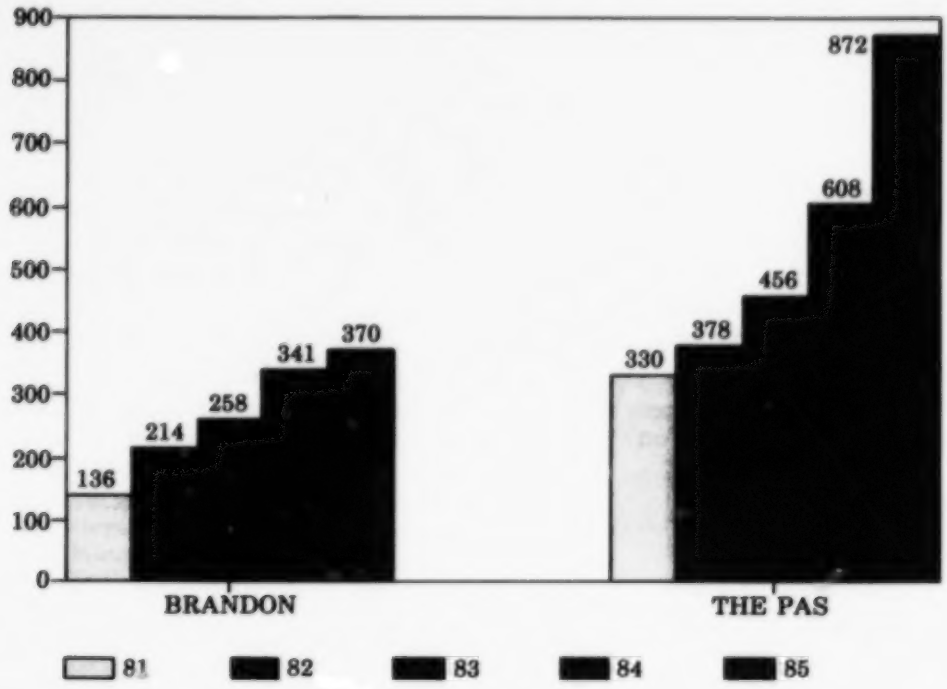
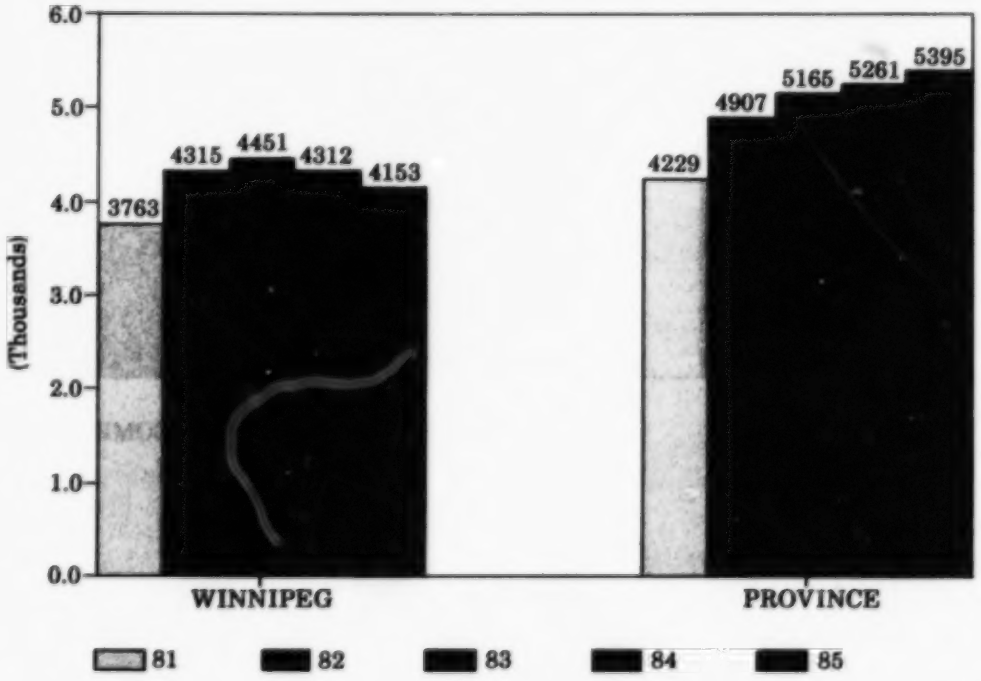
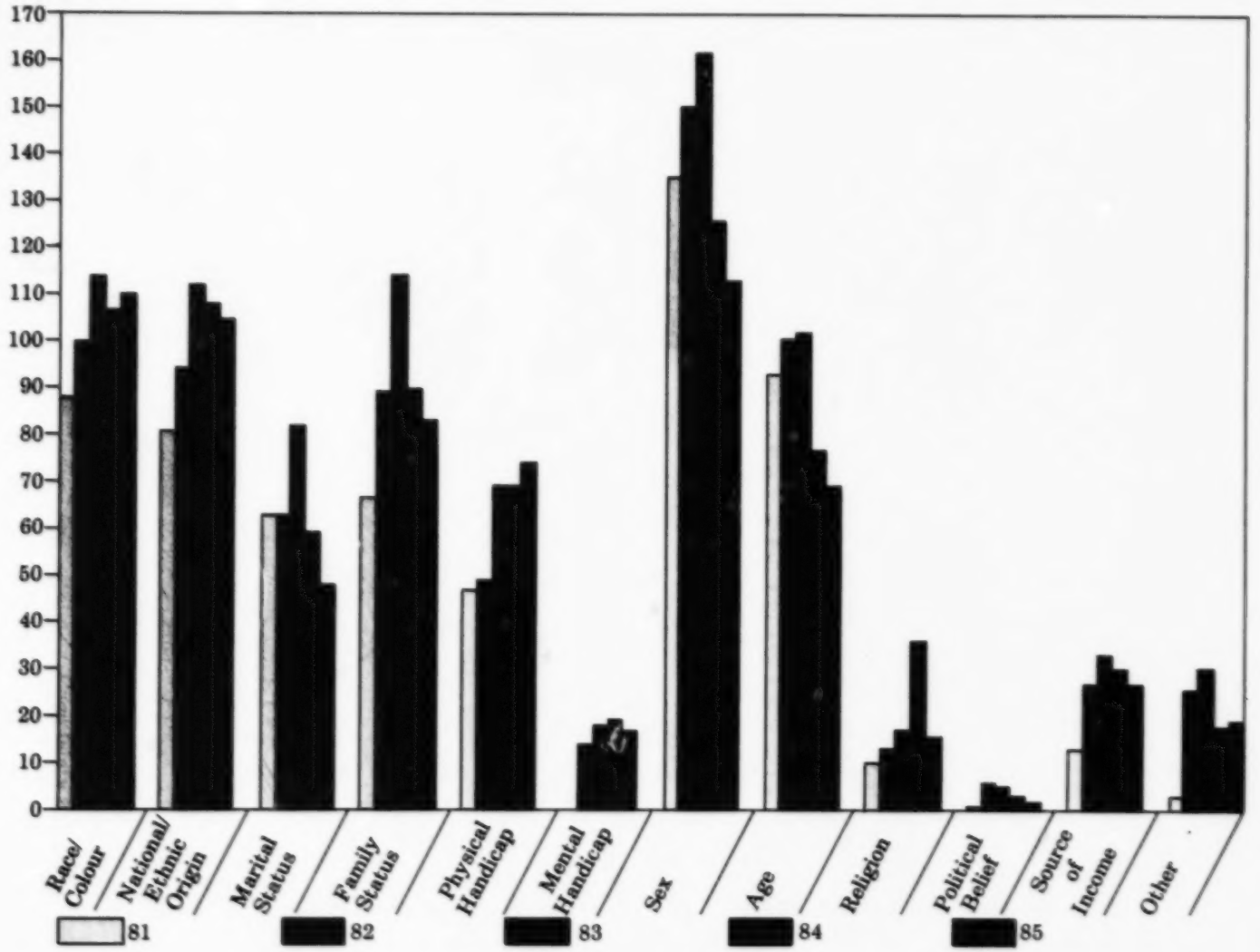


Figure 1.2.2 — Winnipeg and Province



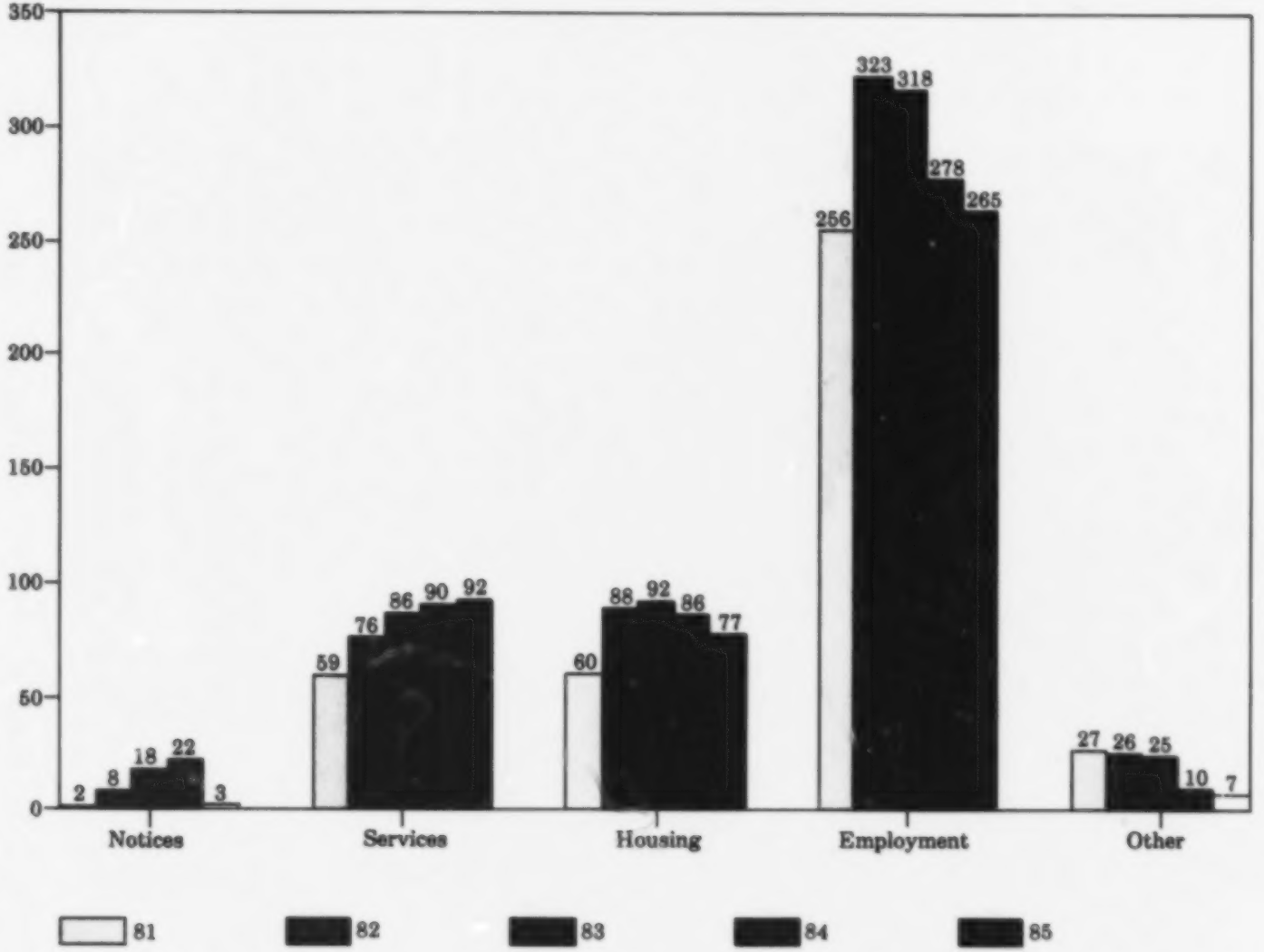
CASES RECEIVED BY GROUNDS OF COMPLAINT 1981-1985

Figure 1.3



CASES RECEIVED BY STATUTORY CATEGORY 1981-1985

Figure 1.4



BREAKDOWN OF CASES RECEIVED BY STATUTORY CATEGORIES AND GROUNDS 1985

Figure 1.5

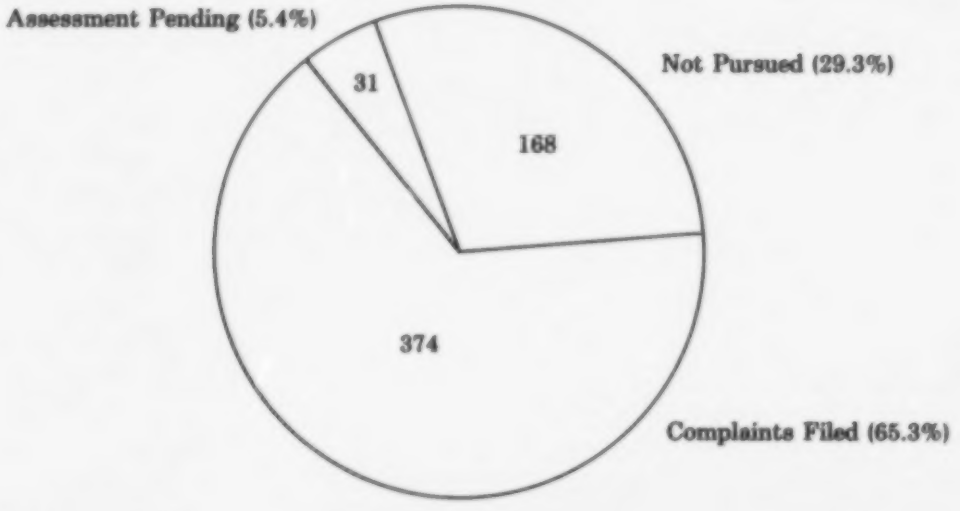
STATUTORY CATEGORY	Race/ Colour	Nationality Ethnic/National Origin	Religion	Sex		Marital Status	Family Status	Age	Source of Income	Political Belief	Reasonable Cause	Physical Handicap	Mental Handicap	Other	TOTAL
				Male	Female										
Notices	1	3	2												6
Services	34	40	10	4	4	6	4	11	5	1	6	15	3	4	147
Housing	15	14		6	3	17	35	18	21		6	4	1	1	141
Property															
Employment	56	46	3	11	79	17	41	32	1		4	51	12	11	364
Membership															
Advertising	1			1											2
Pre-Employment Inquiries	1	1	1	1	3	8	3	7		1		3	1	1	31
Employment Agencies															
Contracts															
White Cane/Dog Guide												1			1
Reprisal	2	1			1			1						2	7
TOTAL	110	105	16	23	90	48	83	69	27	2	16	74	17	19	699*

*This is an inflated figure as the total cases for 1985 were 444. The reason the figure is higher here is that many cases have more than one ground of discrimination.

TOTAL CASELOAD = 444

RESULT OF PRELIMINARY ASSESSMENT OF CASES RECEIVED 1985

Figure 1.6



Brought forward	129
Received in 1985	444
Total	573

DISTRIBUTION ON CASES RECEIVED BY GEOGRAPHIC LOCATION 1985

Figure 1.7

BRANDON AREA*	
Brandon	34
Clear Lake	1
Dauphin	2
Glenboro	1
Neepawa	2
Russell	1
Ste. Rose du Lac	1
Souris	2
Swan River	1
Virden	4
	49

THE PAS OFFICE	
The Pas	10
Churchill	1
Flin Flon	5
Gillam	1
Leaf Rapids	1
Little Grand Rapids	1
Moose Lake	1
Nelson House	1
Norway House	1
Snow Lake	1
Swan River	1
Thicket Portage	1
Thompson	8
	33

WINNIPEG	
Winnipeg	339
Beausejour	1
Bloodvein	1
Carman	1
Gimli	2
Headingley	1
La Broquerie	1
Morris	1
Niverville	1
North West Territories	1
Portage la Prairie	2
St. Claude	2
Selkirk	4
Steinbach	1
Winnipeg Beach	1
Whitemouth	1
Woodridge	2
	362

TOTAL – 444

*Complaints investigated by Winnipeg office until Brandon office was staffed in October 1985.

2. ENFORCEMENT STATISTICS

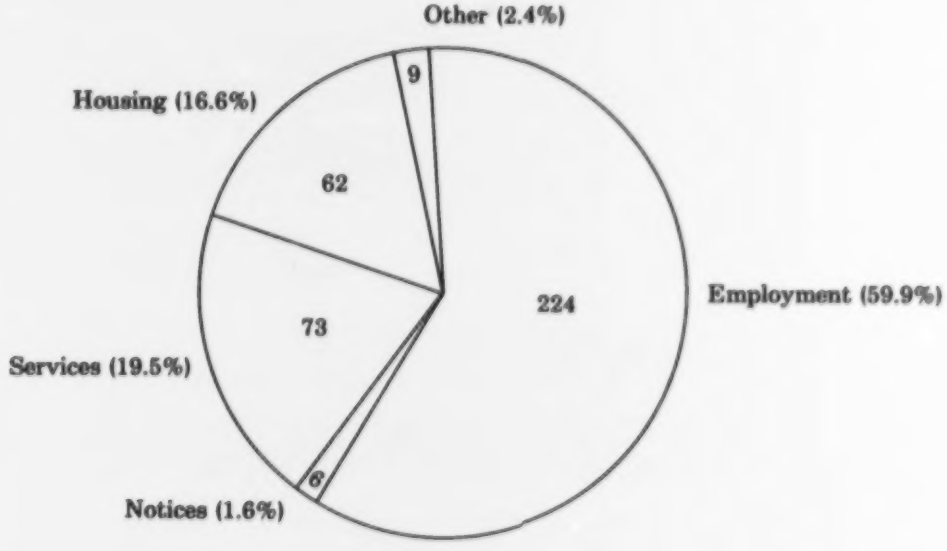
FORMAL COMPLAINTS RECEIVED BY STATUTORY CATEGORY AND GROUNDS OF COMPLAINT 1985

Figure 2.1

STATUTORY CATEGORY	Race/ Colour	Nationality Ethnic/National Origin	Marital Status	Family Status	Physical Handicap	Mental Handicap	Sex	Sexual Harassment	Age	Religion	Political Belief	Source of Income	Other	Total
Employment	50	42	17	36	44	14	81	24	26	4	0	0	10	224
Notices	1	3	0	0	0	0	0	0	0	5	0	0	0	6
Services	25	22	5	3	11	3	7	0	10	9	0	6	4	73
Property	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Contracts	0	0	0	0	2	1	0	0	0	0	0	0	0	3
White Cane/Dog Guide	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Reprisals	0	0	0	0	0	0	0	0	0	0	0	0	0	6
Housing	11	11	12	29	3	1	8	1	13	0	0	20	0	62
TOTAL	87	78	34	68	60	19	96	25	49	18	0	26	14	374

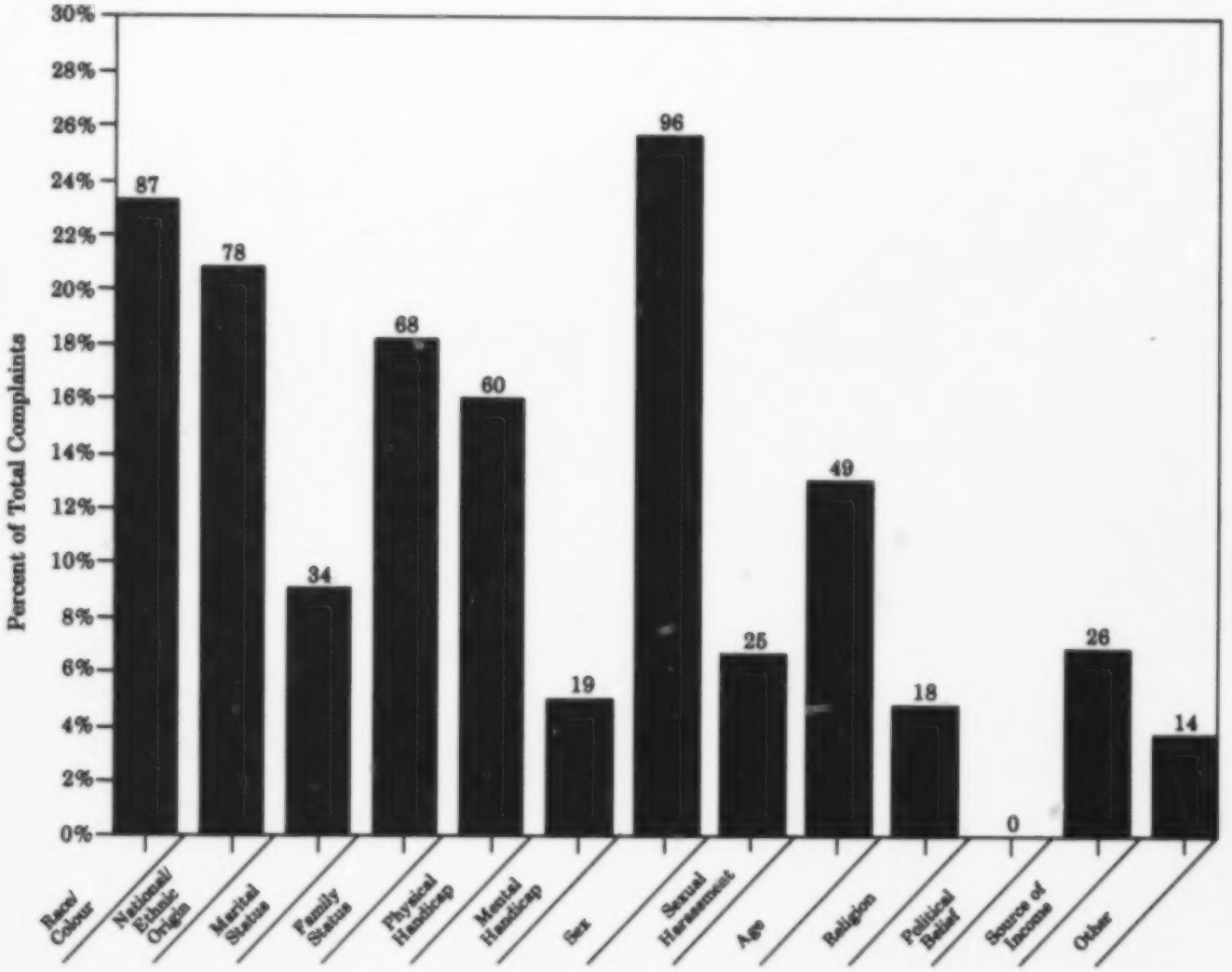
FORMAL COMPLAINTS RECEIVED BY STATUTORY CATEGORY 1985

Figure 2.2



FORMAL COMPLAINTS RECEIVED BY GROUNDS 1985

Figure 2.3



FORMAL COMPLAINTS BY DISPOSITION AND STATUTORY CATEGORY 1985

Figure 2.4

STATUTORY CATEGORY	DISMISSED	SETTLED	WITHDRAWN	UNRESOLVED	REFERRED	TOTAL
Notices	4	1	1	0	0	6
Services	23	25	4	5	0	57
Housing	23	8	5	0	3	39
Property	0	0	0	0	1	1
Employment	74	28	37	2	14	155
Contracts	0	0	0	0	1	1
White Cane/Dog Guide	0	0	0	0	0	0
Reprisals	1	0	0	0	1	2
TOTAL	125	62	47	7	20	261

FORMAL COMPLAINTS BY DISPOSITION AND GROUNDS 1985

Figure 2.5

GROUNDS	DISMISSED	SETTLED	WITHDRAWN	UNRESOLVED	REFERRED	TOTAL
Race, Colour	34	11	8	3	3	59
National/Ethnic Origin	26	6	9	2	0	43
Marital Status	16	8	5	3	4	36
Family Status	21	11	16	2	3	53
Physical Handicap	21	10	5	0	2	38
Mental Handicap	2	0	0	0	1	3
Sex	20	16	15	2	6	59
Age	16	15	5	1	3	40
Religion	8	1	2	0	1	12
Political Belief	0	0	0	0	1	1
Source of Income	5	4	1	0	2	12
Other	4	3	5	0	0	12
						0
TOTAL*	173	85	71	13	26	368

*This is an inflated total as many complaints have more than one ground of discrimination.

YEAR END CASELOAD STATUS REPORT BY REGIONAL OFFICE

Figure 2.6

	WINNIPEG	BRANDON	THE PAS	TOTAL
Brought forward from previous	333	0	27	360
New cases opened in 1985	381	30	33	444
	714	30	60	804
Cases closed in 1985	395	6	31	432
	319	24	29	372
Status at Year End				
Preliminary review	16	2	12	30
In investigation	194	20	14	228
In conciliation	17	2	3	22
In backlog	92	0	0	92
Total	319	24	29	372

Note: Brandon area complaints were handled by the Winnipeg office prior to October 1985.

3. SPEAKER SERVICE STATISTICS

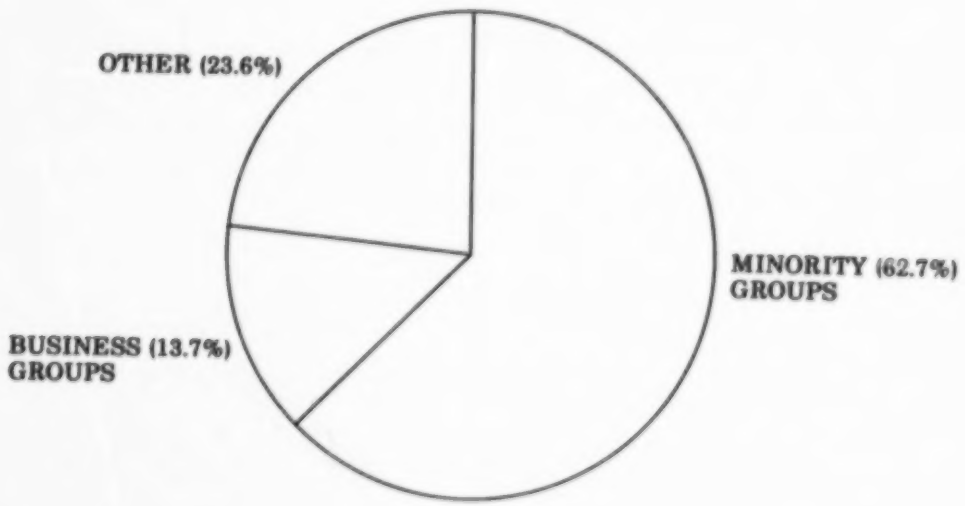
TOTAL SPEAKER SERVICE ACTIVITY

Figure 3.1

Speaking Engagements	125
Consultations	7
Outreach Contacts	100
Information Booths	1
Media Contacts	69
Total	302

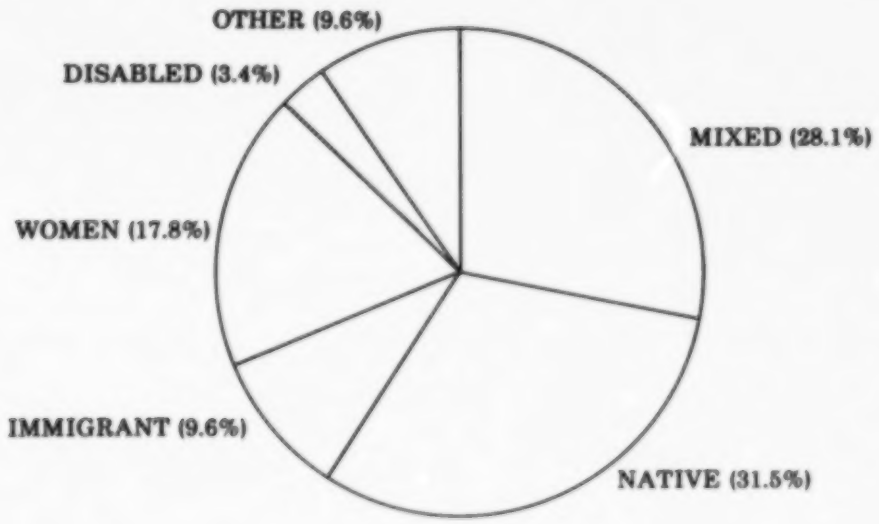
GENERAL AUDIENCE CHARACTERISTICS (excluding media)

Figure 3.2



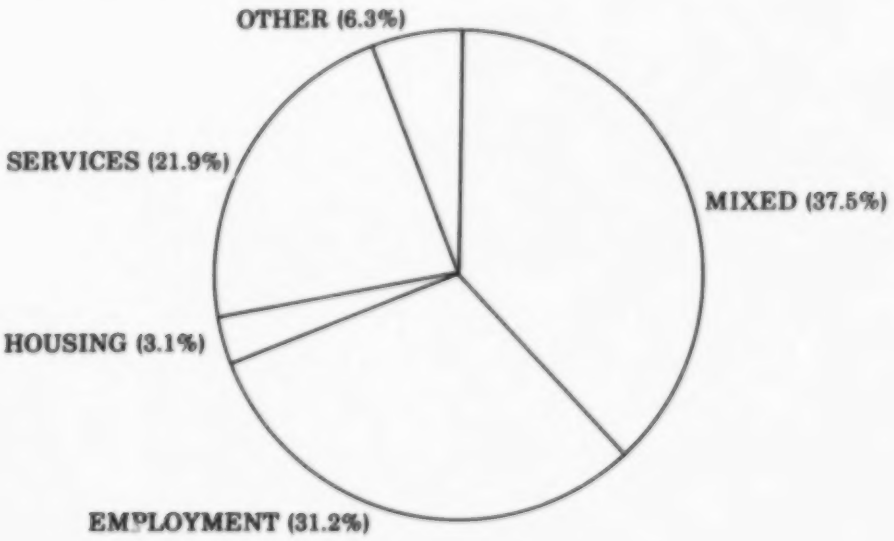
MINORITY GROUP AUDIENCES

Figure 3.3



BUSINESS GROUP AUDIENCES

Figure 3.4



APPENDIX D

The Commissioners

CLAUDIA WRIGHT — Chairperson

Claudia Wright, B.A., M.A., Ph.D, is a professor of Political Science at the University of Winnipeg. She is Associate Dean of Arts and Science, Personnel. Claudia Wright is active in many organizations that are involved in human rights issues. She also has academic interests that complement her commitment to civic education and participation.

MAREK DEBICKI — Vice-Chairperson

Marek Debicki is a member of several civil rights organizations. He teaches civil rights at the University of Manitoba.

LOUISE CLOUTIER (Joined the Commission April 1985)

Louise Cloutier is a writer and freelance broadcaster. For several years, she has been committed to minority and linguistic rights and is a member of several women's rights organizations.

WAYNE COURCHENE

Wayne Courchene, born in Pine Falls, Manitoba , was schooled at the Fort Alexander Residential School on the reserve until he migrated to Winnipeg in 1962 where he graduated from high school. He graduated from the University of Manitoba, and is currently a volunteer on a number of community organizations, such as the Winnipeg Indian and Metis Friendship Centre and the Manitoba Association for Rights and Liberties. Mr. Courchene is presently working for Manitoba Urban Affairs.

JOHN LANE

John Lane is a resident of Winnipeg. Trained as an engineer, he has been employed in a variety of fields and is currently the Executive Director of the Canadian Paraplegic Association (Manitoba Division). He is physically disabled with quadraplegia due to a spinal cord injury sustained in 1968.

PAUL LAPORTE (Joined the Commission September 1985)

Paul Laporte was raised in Inwood, Manitoba. He is currently a history teacher at Kildonan East Regional Secondary school and, over the past 26 years, has also taught in Duck Bay, Teulon and Arhus, Denmark. Mr. Laporte is an active member of various community, union, educational and human rights groups and in 1981 was selected by the Manitoba Teachers Society for the U.N.E.C.F. Award for the Teaching of Human Rights.

RAJ MEHTA (Joined the Commission July 1985)

Raj Mehta, B.Sc., LL.B, is General Manager of Lansy Enterprises Ltd. He is dedicated to the cause of human rights and is active in various cultural and community groups. Mr. Mehta is currently President of the Winnipeg Chapter of the National Association of Canadians of Origins in India and a member of the Multicultural Advisory Committee.

JILL OLIVER

Jill Oliver came to Canada from England in 1957. She resided in Winnipeg from 1962 to 1969 when she moved to Prince Edward Island. She returned to Winnipeg in 1972 to study political science at the University of Winnipeg. She received her law degree from the University of Manitoba in 1977 and was called to the Manitoba Bar in 1978. Ms. Oliver has practiced law in Winnipeg since 1978. She has been active in the women's movement since 1973. She is currently a Bencher with the Law Society of Manitoba.

MARION ROBINSONG (Joined the Commission June 1985)

Marion Robinsong, born and raised in Brandon, Manitoba, is a Resource Teacher with the Brandon School Division. She holds Bachelors degrees in Arts and Education from Brandon University and also attended the University of California at Santa Barbara for a post graduate year of Studies in Education. She is active in many organizations involved with human rights, personal counselling, improved parenting and home schooling as well as the Manitoba Association of Resource Teachers and the Manitoba Association for Children and Adults with Learning Disabilities.

MARIO JORGE SANTOS

Mario Jorge Santos is a member of several ethnic organizations in Winnipeg. He is currently serving with the Winnipeg School Board.

APPENDIX E

MANITOBA

THE HUMAN RIGHTS ACT

being

CHAPTER H175

of the

CONTINUING CONSOLIDATION OF
THE STATUTES OF MANITOBA

OFFICE CONSOLIDATION

NOTICE

All persons making use of this consolidation are reminded that it has no legislative sanction; that the amendments have been embodied only for convenience of reference; and that the original Act should be consulted for all purposes of interpreting and applying the law.

Printed by the Queen's Printer for the Province of Manitoba
DECEMBER, 1985

CHAPTER H175

THE HUMAN RIGHTS ACT.

(Assented to June 14, 1974)

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of Manitoba, enacts as follows:

Definitions.

1 In this Act

(a) "blind person" means a person who

(i) is registered as a blind person with The Canadian National Institute for the Blind, a corporation incorporated under the Canada Corporations Act and continued under the Canada Business Corporations Act, or

(ii) is in receipt of an allowance on account of blindness under The Blind Persons Allowances Act or the Blind Persons Act (Canada), or

(iii) having been in receipt of an allowance on account of blindness under the Acts mentioned in sub-clause (ii), is in receipt of a pension under the Old Age Security Act (Canada) and is still blind within the meaning of the Acts mentioned in sub-clause (ii) and regulations made thereunder;

En. S.M. 1982, c. 23, s. 1.

(a.1) "commercial unit" means any building, or other structure or part thereof that is used or occupied or is intended, arranged or designed to be used or occupied for the manufacture, sale, resale, processing, reprocessing, displaying, storing, handling, garaging or distribution of personal property, or any space that is used or occupied or is intended, arranged or designed to be used or occupied as a separate business or professional unit or office or meeting room in any building or other structure or in a part thereof;

En. S.M. 1982, c. 23, s. 1; Am. S.M. 1984, c. 17, s. 13(1).

(b) "Commission" means the Manitoba Human Rights Commission;

(b.1) "dog guide" means a dog which serves as a dog guide or leader for a blind person and has been especially trained for the purpose;

En. S.M. 1982, c. 23, s. 2.

(c) "employers' organization" means an organization of employers formed for purposes that include the regulation of relations between employers and employees;

(d) "employment agency" includes a person who undertakes with or without compensation to procure employees and a person who undertakes with or without compensation to procure employment for persons;

(d.1) "family status" for the purpose of this Act includes the status of an unmarried person or parent, a widow or widower or that of a person who is divorced or separated or the status of the children, dependants, or members of the family of a person;

En. S.M. 1976, c. 48, s. 1.

(e) "housing accommodation" means any place of dwelling, except a place of dwelling that is part of a building in which the owner or his family or both, reside where the occupants of the place of dwelling are required to share

(i) a bathroom or kitchen facility, or

(ii) a common entrance, except in a duplex, apartment building or condominium,

with the owner of the dwelling or his family or both;

En. S.M. 1978, c. 43, s. 1.

(f) "minister" means the member of the Executive Council charged by the Lieutenant Governor in Council with the administration of this Act;

(g) "national origin" includes the national origin of an ancestor;

(h) "occupational association" means any organization, other than a trade union or employers' organization, in which membership is a prerequisite or from which licensing or certification is necessary, to carrying on a trade, occupation or profession;

(i) "person" in addition to the extended meaning given it by The Interpretation Act, includes an employment agency, and employers' organization, a trade union, an occupational association, and a class of persons;

(i.1) "physical or mental handicap" means a disability, infirmity, malformation or disfigurement whether of a physical or mental nature that is caused by injury, birth defect or illness and includes but is not limited to epilepsy, any degree of paralysis, amputation, lack of physical co-ordination, blindness or visual impediment, deafness or hearing impediment, muteness or speech impediment, or physical reliance on a dog guide, wheelchair or other remedial appliance or device;

En. S.M. 1982, c. 23, s. 3.

(j) "trade union" means an organization of employees formed for purposes that include the regulation of relations between employees and employers;

(k) "wages" includes pay, salary, remuneration, lost benefits, out-of-pocket expenses and interest thereon;

(l) "white cane" means a cane or walking stick all of which or the major portion of which is white.

En. S.M. 1982, c. 23, s. 4.

S.M. 1974, c. 65, s. 1; Am. S.M. 1976, c. 48, s. 1; S.M. 1977, c. 46, s. 1; S.M. 1978, c. 43, s. 1; S.M. 1982, c. 23, ss. 1-4; S.M. 1984, c. 17, s. 13(1).

PART I

PROHIBITED DISCRIMINATORY PRACTICES

Discrimination prohibited in notices, signs, etc.

2(1) No person shall

(a) publish, display, transmit or broadcast, or cause to be published, displayed, transmitted or broadcast; or

(b) permit to be published, displayed, broadcast or transmitted to the public, on lands or premises, in a newspaper, through television or radio or telephone, or by means of any other medium which he owns or controls;

any notice, sign, symbol, emblem or other representation

(c) indicating discrimination or intention to discriminate against a person; or

(d) exposing or tending to expose a person to hatred;

because of the race, nationality, religion, colour, sex, marital status, physical or mental handicap, age, source of income, family status, ethnic or national origin of that person.

Am. S.M. 1976, c. 48, s. 2; Am. S.M. 1977, c. 46, s. 2; S.M. 1982, c. 23, s. 5.

Exception as to matters of opinion.

2(2) Nothing in subsection (1) shall be deemed to interfere with the free expression of opinion upon any subject.

Exception.

2(3) Subsection (1) does not apply to the display of a notice, sign, symbol, emblem or other representation displayed to identify facilities customarily used by one sex.

S.M. 1974, c. 65, s. 2; Am. S.M. 1976, c. 48, s. 2; Am. S.M. 1977, c. 46, s. 2; S.M. 1982, c. 23, s. 5.

Discrimination prohibited in accommodation, service, etc.

3(1) No person shall

(a) deny to any person or class of persons any accommodation, service, facility, goods, right, licence or privilege available to the public or to a section of the public; or

(b) discriminate against any person or class of persons with respect to any accommodation, service, facility, goods, right, licence or privilege available to the public or to a section of the public;

unless reasonable cause exists for the denial or discrimination.

En. S.M. 1982, c. 23, s. 6; Am. S.M. 1982-83-84, c. 93, s. 15.

Things that do not constitute reasonable cause.

3(2) For the purposes of subsection (1), the race, nationality, religion, colour, sex, age, marital status, family status, physical or mental handicap, or ethnic or national origin of a person does not constitute reasonable cause unless the Commission is satisfied after considering the facts of the particular situation that a denial or discrimination on such grounds is justified in that particular situation.

En. S.M. 1982, c. 23, s. 6.

Definition.

3(3) For the purposes of subsection (1), the expression "accommodation, service, facility, goods, right, licence or privilege available to the public or to a section of the public" includes, without restricting the generality of that expression, any benefit provided and any activity or undertaking carried out, by Her Majesty in the right of Manitoba, the Government of Manitoba, any municipal corporation or educational institution in Manitoba, any board or commission created by or subject in this regard to the laws of Manitoba, or by any of their agents or servants.

En. S.M. 1982, c. 23, s. 6.

Exception for person under the age of majority.

3(4) Nothing in subsection (1) prevents the denial or refusal of any accommodation, service, facility, goods, right, licence or privilege to a person who has not attained the age of majority if the denial or refusal is in accordance with any law or regulation in force in Manitoba.

En. S.M. 1982, c. 23, s. 6.
Am. S.M. 1982-83-84, c. 93, s. 15.

Discrimination prohibited in occupancy of commercial unit or housing accommodation.

4(1) No person, directly or indirectly, alone or with another, by himself or by the interposition of another, shall

(a) deny to any person or any member of his family, the right to occupancy of any commercial unit or any housing accommodation; or

(b) discriminate against any person or any member of his family with respect to any term or condition of occupancy of any commercial unit or housing accommodation,

unless reasonable cause exists for the denial or discrimination.

En. S.M. 1976, c. 48, s. 4.

Things that do not constitute reasonable cause.

4(2) For the purposes of subsection (1), the race, nationality, religion, colour, sex, age, marital status, physical or mental handicap, family status, ethnic or national origin, or the source of income of a person does not constitute reasonable cause.

En. S.M. 1976, c. 48, s. 4; Am. S.M. 1977, c. 46, s. 2; S.M. 1982, c. 23, s. 7.

Accommodation may be restricted on basis of sex.

4(3) Notwithstanding subsections (1) and (2), occupancy of all the housing accommodation in a building, except that of the owner or his family, may be restricted to individuals of the same sex.

En. S.M. 1976, c. 48, s. 4.

Preference for elderly persons.

4(4) Nothing in subsection (1) prevents a person from giving preference to elderly persons of housing accommodation in any building that is designed or used primarily for elderly persons.

En. S.M. 1976, c. 48, s. 4.
En. S.M. 1976, c. 48, s. 4; Am. S.M. 1977, c. 46, s. 2; S.M. 1982, c. 23, s. 7.

Discrimination prohibited in the purchase of property.

5 No person shall

(a) deny to any person the opportunity to purchase any commercial unit or housing accommodation that is advertised or in any way represented as being available for sale; or

(b) deny to any person the opportunity to purchase or otherwise acquire land or an interest in land that is advertised or in any way represented as being available for sale; or

(c) discriminate against any person with respect to any term or condition of the purchase or other acquisition of any commercial unit, housing accommodation, land or interest in land that is advertised or in any way represented as being available for sale;

because of the race, nationality, religion, colour, sex, age, marital status, family status, physical or mental handicap, ethnic or national origin of that person.

S.M. 1974, c. 65, s. 5; Am. S.M. 1976, c. 48, s. 5; Am. S.M. 1977, c. 46, s. 2; S.M. 1982, c. 23, s. 8.

Discrimination prohibited in employment.

6(1) Every person has the right of equality of opportunity based upon bona fide qualifications in respect of his occupation or employment or in respect of training for employment or in respect of an intended occupation, employment, advancement or promotion, and in respect of his membership or intended membership in a trade union, employers' organization or occupational association; and, without limiting the generality of the foregoing

(a) no employer or person acting on behalf of an employer, shall refuse to employ, or to continue to employ or to train the person for employment or to advance or promote that person, or discriminate against that person in respect of employment or any term or condition of employment;

(b) no employment agency shall refuse to refer a person for employment, or for training for employment, and

(c) no trade union, employers' organization or occupational association shall refuse membership to, expel, suspend or otherwise discriminate against that person; or negotiate, on behalf of that person, an agreement that would discriminate against him;

because of race, nationality, religion, colour, sex, age, marital status, physical or mental handicap, ethnic or national origin, or political beliefs or family status of that person.

Am. S.M. 1976, c. 48, s. 6; Am. S.M. 1977, c. 46, ss. 2 & 3; S.M. 1982, c. 23, s. 9.

Discrimination prohibited in advertising.

6(2) No employer shall publish, display, circulate or broadcast or cause or permit to be published, displayed, circulated or broadcast, any words, symbol or other representation that indicate directly or indirectly that race, nationality, religion, colour, sex, age, marital status, physical or mental handicap, ethnic or national origin, or political belief or family status is or may be a limitation, specification or preference for a position of employment.

Am. S.M. 1976, c. 48, s. 7; Am. S.M. 1977, c. 46, s. 2; S.M. 1982, c. 23, s. 10.

Discrimination prohibited in advertising on behalf of an employer.

6(3) No person shall publish, display, circulate or broadcast or cause or permit to be published, displayed, circulated or broadcast any advertisement for a position of employment for or on behalf of an employer

(a) that contains any words, symbol, or other representation; or

(b) that is under a classification or heading;

indicating directly or indirectly that race, nationality, religion, colour, sex, age, marital status, physical or mental handicap, ethnic or national origin, or political belief or family status is or may be a limitation, specification or preference for the position of employment.

Am. S.M. 1976, c. 48, s. 8; Am. S.M. 1977, c. 46, s. 2; S.M. 1982, c. 23, s. 11.

Pre-employment inquiries.

6(4) No person shall use or circulate any form of application for employment or make any written or oral inquiry that expresses either directly or indirectly any limitation, specification or preference as to race, nationality, religion, colour, sex, age, marital status, physical or mental handicap, ethnic or national origin, or political belief or family status of any person or that requires an applicant for employment to furnish any information concerning those particulars.

Am. S.M. 1976, c. 48, s. 9; Am. S.M. 1977, c. 46, s. 2; S.M. 1982, c. 23, s. 12.

Employment agencies.

6(5) No employment agency shall discriminate against any person because of race, nationality, religion, colour, sex, age, marital status, physical or mental handicap, ethnic or national origin, or political belief or family status in receiving, classifying, disposing of or otherwise acting upon applications for its service or in referring an applicant for employment to an employer or anyone acting on behalf of the employer.

Am. S.M. 1976, c. 48, s. 10; Am. S.M. 1977, c. 46, s. 2; S.M. 1982, c. 23, s. 13.

Exception.

6(6) The provisions of this section relating to any discrimination, limitation, specification or preference for a position or employment based on sex, age, marital status, family status, physical or mental handicap, or political belief, do not apply, where

(a) sex, age, marital status, family status, or political belief, is a reasonable occupational qualification; or

(b) physical or mental handicap is a reasonable disqualification.

En. S.M. 1982, c. 23, s. 14.

Exception.

6(7) The provisions of this section relating to a limitation or preference in employment do not apply to an exclusively religious, philanthropic, educational, fraternal or social organization that is not operated for private profit and is operated primarily to foster the welfare of a group or class of persons characterized by a common race, nationality, religion, colour, sex, age, marital status, family status, physical or mental handicap, ethnic or national origin, where, in any such case, one or more of the above enumerated criteria is a bona fide occupational qualification and requirement.

Am. S.M. 1977, c. 46, s. 2; S.M. 1982, c. 23, s. 15.

6(8) Repealed. S.M. 1982, c. 23, s. 16.

Exception for persons under the age of majority.

6(9) Nothing in this section prevents a person from limiting the employment of a person under the age of majority or from classifying or referring to a person under the age of majority for employment in accordance with the provisions of any provincial law regulating the employment of persons under the age of majority.

Exception for physical or mental handicap.

6(10) The provisions of this section prohibiting the discrimination against a person for a position or employment by reason of the physical or mental handicap of the person do not apply where the nature and extent of the handicap reasonably precludes or renders the person incapable of satisfactorily discharging the duties of that position.

En. S.M. 1977, c. 46, s. 4; Am. S.M. 1982, c. 23, s. 17.

Handicapped persons with training and experience.

6(11) Notwithstanding subsection (10), no person shall refuse to employ a person who is physically or mentally handicapped, if the person has adequate training and experience and is qualified and capable to carry out the duties and functions of the position.

En. S.M. 1977, c. 46, s. 4; Am. S.M. 1982, c. 23, s. 18.

S.M. 1974, c. 65, s. 6; Am. S.M. 1976, c. 48, ss. 6-10; S.M. 1977, c. 46, ss. 2-4; S.M. 1982, c. 23, ss. 9-18.

Discrimination prohibited in contracts.

7(1) No person shall, in making available to any person, a contract that is offered to the public generally,

(a) discriminate against any person; or

(b) include terms or conditions in any such contract that discriminate against a person;

on the basis of race, nationality, religion, colour, sex, age, marital status, family status, physical or mental handicap, ethnic or national origin of that person.

Am. S.M. 1977, c. 46, s. 2; S.M. 1982, c. 23, s. 19.

Exception.

7(2) No provision of section 6 or subsection (1) shall prohibit a distinction on the basis of age, sex, family status, physical or mental handicap or marital status

(a) of any employee benefit plan or in any contract which provides an employee benefit plan, if the Commission is satisfied on the basis of the guidelines set out in the regulations that the distinction is not discriminatory or that the employee benefit can be provided only if the distinction is permitted; or

(b) in any contract which provides life insurance, accident and sickness insurance or a life annuity to a specified person where the contract is not part of an employee benefit plan, if the Commission is satisfied on the basis of guidelines set out in the regulations that the distinction is not discriminatory or that the insurance or annuity can be provided only if the distinction is permitted.

En. S.M. 1976, c. 48, s. 11; Am. S.M. 1977, c. 46, s. 2; S.M. 1982, c. 23, s. 20.

Subject to Pension Benefits Act.

7(2.1) Subsection (2) is subject to subsection 21(6.4) of The Pension Benefits Act.

En. S.M. 1985, c. 51, s. 18.

Automobile insurance contracts not affected.

7(3) Nothing in this Act prohibits a distinction on the basis of sex, age or marital status in any contract of automobile insurance offered or made available to the public under The Manitoba Public Insurance Corporation Act or The Insurance Act.

En. S.M. 1978, c. 43, s. 2.

S.M. 1974, c. 65, s. 7; Am. S.M. 1976, c. 48, s. 11; S.M. 1977, c. 46, s. 2; S.M. 1978, c. 43, s. 2; S.M. 1982, c. 23, ss. 19 & 20; S.M. 1985, c. 51, s. 18.

Restriction on use of white cane.

7.1(1) No person other than a blind person shall carry or use a white cane on any highway or public thoroughfare, or in any public conveyance or other public place.

En. S.M. 1982, c. 23, s. 21.

Dog guides to accompany blind persons.

7.1(2) Notwithstanding any enactment, regulation, or by-law, a dog guide

(a) while accompanying a blind person; and

(b) while in the custody and under the control of a blind person;

may, without charge, enter and remain with the blind person in any place where the public is admitted, or facility, or conveyance, where the public is accommodated.

En. S.M. 1982, c. 23, s. 21.

Discrimination, etc., prohibited for taking part in proceeding under Act.

8 No person shall

(a) refuse to employ or continue to employ any person;

(b) threaten to dismiss or threaten to penalize in any way any person in regard to his employment or any term or condition thereof;

(c) discriminate against any person in regard to his employment or any term or condition thereof; or

(d) intimidate or coerce or impose any pecuniary or other penalty upon any person;

on the ground that such person,

(e) has made or may make a complaint under this Act;

(f) has made or may make a disclosure concerning the matter complained of;

(g) has testified or may testify in a proceeding under this Act; or

(h) has participated or may participate in any other way in a proceeding under this Act.

S.M. 1974, c. 65, s. 8; Am. S.M. 1975, c. 42, s. 26.

Special programs.

9 Notwithstanding the provisions of this Part, the Commission may, upon such conditions or limitations and subject to revocation or suspension, approve in writing a special plan or program by the Crown, any agency thereof, or any person designed to promote the socio-economic welfare and equality in status of a disadvantaged class of persons defined by race, nationality, religion, colour, sex, marital status, physical or mental handicap, family status, age, source of income or ethnic or national origin of the members of that class of persons.

En. S.M. 1978, c. 43, s. 3; Am. S.M. 1982, c. 23, s. 22.

PART II

ADMINISTRATION

Manitoba Human Rights Commission established.

10(1) There is hereby established a commission to be called: "The Manitoba Human Rights Commission".

Composition.

10(2) The Commission shall be composed of such numbers of persons as may be determined from time to time by the Lieutenant Governor in Council.

Members.

10(3) The members of the Commission shall be appointed by the Lieutenant Governor in Council.

Chairperson.

10(4) The Lieutenant Governor in Council shall designate one of the members as chairperson and one member as vice-chairperson.

Vacancies.

10(5) The Lieutenant Governor in Council may fill any vacancy however created, in the membership of the Commission.

Remuneration and term of office.

10(6) The Lieutenant Governor in Council may determine the term of office and the remuneration of the members of the Commission.

S.M. 1974, c. 65, s. 10.

Responsibility.

11 The Commission is responsible to the minister for the administration of this Act.

S.M. 1974, c. 65, s. 11.

Members of Commission continued in office.

12 Those persons, who on the coming into force of this Act are members of the Commission, shall continue to hold office until their successors are appointed.

S.M. 1974, c. 65, s. 12.

Function.

13 The Commission has power to administer this Act and without limiting the generality of the foregoing, it is the function of the Commission,

(a) to forward the principle that every person is free and equal in dignity and rights without regard to race, nationality, religion, colour, sex, age, marital status, physical or mental handicap, ethnic or national origin, political beliefs, family status or source of income;

(b) to promote an understanding of, acceptance of and compliance with this Act;

(c) to develop and conduct educational programs designed to eliminate discriminatory practices related to race, nationality, religion, colour, sex, age, marital status, physical or mental handicap, ethnic or national origin, political beliefs, family status or source of income;

(d) to disseminate knowledge and promote understanding of the civil and legal rights of residents of the province and to conduct educational programs in that respect;

(e) to further the principle of equality of opportunities and equality in the exercise of civil and legal rights regardless of status.

S.M. 1974, c. 65, s. 13; Am. S.M. 1977, c. 46, s. 2; S.M. 1982, c. 23, s. 23.

Employment of personnel.

14 An executive director and such other officers and employees as may be required for te purpose of the administration of this Act, may be employed under The Civil Service Act.

S.M. 1974, c. 65, s. 14.

Responsibility of the executive director.

15 The executive director of the Commission, in addition to such other duties, that he may be required to perform by law, shall

(a) be responsible to the Commission for its day-to-day activities and operations; and

(b) act as registrar of complaints received by the Commission to assure that they are dealt with according to the Act.

S.M. 1974, c. 65, s. 15.

Confidentiality of information.

16 Except for the purposes of a prosecution under this Act, or proceedings before a board of adjudication, or in any court proceedings, or for the purpose of the administration and enforcement of this Act, no person shall, except with the consent of the commission

(a) knowingly communicate, or allow to be communicated, to any person any information obtained by or on behalf of the commission or the Executive Director under this Act; or

(b) knowingly allow any person to inspect, or to have access to, any copy of any book, record, document, file, correspondence or other record obtained by, or on behalf of, the commission or the Executive Director under this Act.

En. S.M. 1976, c. 48, s. 12.

Costs of administration.

17 The costs of administering this Act shall be paid from and out of the Consolidated Fund with moneys authorized by an Act of the Legislature to be so paid and applied.

S.M. 1974, c. 65, s. 17.

Annual report.

18(1) The Commission shall prepare annually and submit to the minister, a report of the activities of the Commission and boards of adjudication during the preceding year.

Am. S.M. 1976, c. 48, s. 13.

Annual report.

18(2) The minister shall lay forthwith the report before the Legislative Assembly if it is in session and if not, with 15 days of the commencement of the next ensuing session.

S.M. 1974, c. 65, s. 18; Am. S.M. 1976, c. 48, s. 13.

PART III

ENFORCEMENT OF ACT

Complaints.

19(1) Any person who has reasonable grounds for believing that any person has contravened a provision of this Act, may file with the Commission a complaint in the form prescribed by the Commission, such complaint to be filed with the Commission not later than 6 months after the date of the alleged contravention or, where a continuing contravention is alleged, after the date of the last alleged contravention of this Act.

Consent of offended person.

19(2) Where a complaint is made by a person other than the person whom it is alleged was dealt with contrary to the provisions of this Act, the Commission may refuse to file the complaint unless the person alleged to be offended against consents thereto.

Complaints initiated by Commission.

19(3) Where the Commission has reason for believing that any person has contravened a provision of this Act in respect of a person or group of persons, the Commission may initiate a complaint.

S.M. 1974, c. 65, s. 19.

Commission may dismiss complaint.

19(4) Where the Commission is satisfied that a complaint is without merit, it may dismiss the complaint at any stage of the proceeding.

En. S.M. 1978, c. 43, s. 4.
S.M. 1974, c. 65, s. 19; Am. S.M. 1978, c. 43, s. 4.

Investigation of complaint.

20 The Commission shall, as soon as is reasonably possible, investigate any complaint of an alleged contravention of the Act.

S.M. 1974, c. 65, s. 20; Am. S.M. 1976, c. 48, s. 14.

Powers of commission after investigation.

21(1) The commission, after investigating the complaint, may

(a) endeavour to effect a settlement of the complaint of an alleged contravention of the Act, and failing settlement of the complaint, the commission may request the minister to appoint a board of adjudication to hear and decide the complaint; or

(b) request the minister to appoint a board of adjudication to hear and decide the complaint; or

(c) recommend that the minister commence a prosecution for an offence under this Act.

En. S.M. 1976, c. 48, s. 15.

Appointment of board.

21(2) The minister shall, within a reasonable time after the receipt of a request under clause (1)(a) or (b) appoint a board of adjudication consisting of one or more persons to hear and decide the compalint.

En. S.M. 1976, c. 48, s. 15.

Prohibition.

21(3) No person appointed to a board of adjudication shall have taken part in any investigation or consideration of the complaint prior to the inquiry by a board of adjudication.

En. S.M. 1976, c. 48, s. 15.

Powers of Commission and board of adjudication.

22 The Commission and any board of adjudication appointed under this Act may determine their procedure and each member of a board of adjudication has all the powers of a commissioner under Part V of The Manitoba Evidence Act, and Part V excepting section 88 of that Act, applies to any investigation being made by the Commission or any inquiry being made by a board of adjudication but no notice of the authorization or of the purpose or scope of the investigation or inquiry, as the case may be, is to be made by the Commission or board of adjudication and no notice of the time and place of the investigation or inquiry need be published as required under section 88 of that Act.

S.M. 1974, c. 65, s. 22.

Access to premises and documents.

23(1) For the purpose of investigating a specific complaint under this Act, the executive director, any person with the written authorization of the executive director, or the board of adjudication,

(a) shall have access during normal business hours to any land, residence or business premises of any person with respect to whom there is reasonable and probable grounds to believe that such access will assist the investigation of the complaint; and

(b) may inspect such specific documents, correspondence and records relevant to the complaint and may make copies thereof or take extracts therefrom.

En. S.M. 1976, c. 48, s. 16.

Authority for access.

23(2) Where a person refuses to grant access to any land, residence or business premises or refuses to produce documents, correspondence or records for purposes of subsection (2), the executive director or a board of adjudication may apply to a justice for an order

(a) granting the executive director or board of adjudication access to the land, residence or business premises; or

(b) granting the executive director or board of adjudication access to specific documents, correspondence and records therein which are relevant to the complaint; or

(c) authorizing the executive director or board of adjudication to make copies of, or take extracts from, the documents, correspondence and records;

or to do 2 or more of those things.

En. S.M. 1985, c. 50, s. 13.

Where order may be issued.

23(2.1) A justice may, on an ex parte application where necessary, issue the order referred to in subsection (2) if the justice is satisfied that

(a) there are reasonable and probable grounds to believe that access to the land, residence or business premises will assist in the investigation of the complaint; and

(b) the authority for access is reasonable and necessary for purposes of investigating the complaint.

En. S.M. 1985, c. 50, s. 13.

Information confidential.

23(3) Except for the purposes of a prosecution under this Act, or any court proceeding or for the purpose of the administration and enforcement of this Act, no person shall

(a) knowingly communicate, or allow to be communicated to any person any information obtained under this section; or

(b) knowingly allow any person to inspect, or to have access to, any copy of any document, correspondence or record, obtained under this section.

En. S.M. 1976, c. 48, s. 16.

Exception.

23(4) Subsection (3) does not prohibit

(a) the communication of any information by the executive director or a board of adjudication or by a person acting under the authority of the executive director, to persons charged with the administration of any statutes of Canada or any other province that relate to the subject matter of this Act; or

(b) the communication of any information with the consent of the person to whom the information relates; or

(c) the release or publication by the executive director or the board of adjudication, with the consent of the owner, of any document, correspondence or record or any copy thereof.

En. S.M. 1976, c. 48, s. 16.

En. S.M. 1976, c. 48, s. 16; Am. S.M. 1985, c. 50, s. 13.

Obstruction.

24 No person shall hinder, obstruct, or interfere with or attempt to hinder, obstruct, molest or interfere with, the Commission or a person acting under the authority of the Commission or a board of adjudication in the exercise of their powers and duties under this Act.

S.M. 1974, c. 65, s. 24.

Hearing.

25(1) Upon the appointment of a board of adjudication the board shall without undue delay hold a public hearing for the purpose of inquiry into and deciding the complaint.

Evidence before board.

25(2) The board of adjudication may receive and accept, on oath, affidavit, or otherwise, such evidence or information as it, in its discretion, considers necessary and appropriate, whether or not such evidence or information would be admissible in a court of law.

Administration of oath.

25(3) Any member of the board of adjudication may administer an oath or affirmation to any witness who is called to give evidence before the board.

Notice to parties.

25(4) Before proceeding to hold a hearing, the board of adjudication shall give at least 10 days written notice of the date, time and place of the hearing to all the parties thereto, and a copy of the complaint shall be annexed to the notice.

Full opportunity to be heard.

25(5) The board of adjudication shall give to all parties to a hearing being conducted by it full opportunity to be represented by counsel, to present evidence and make submissions.

Exclusive jurisdiction of board to decide law and fact.

25(6) Subject to appeal under subsection 30(1), the board of adjudication has exclusive jurisdiction and authority to determine any question of fact or law or both required to be decided in reaching a decision as to whether or not any party has contravened this Act or for the making of any order pursuant to such decision.

En. S.M. 1976, c. 48, s. 17.
S.M. 1974, c. 65, s. 25; Am. S.M. 1976, c. 48, s. 17.

Parties to a hearing.

26 The parties to a hearing before a board of adjudication with respect to a complaint that is being inquired into by the board are,

(a) the Commission, which shall have the carriage of the complaint;

(b) the person named in the complaint as the complainant;

(c) any person named in the complaint and alleged to have been dealt with contrary to the provisions of this Act;

(d) the accused or any person named in the complaint as alleged to have contravened this Act; and

(e) any other person as may be determined by the board.

S.M. 1974, c. 65, s. 26.

Recording of oral evidence.

27 The oral evidence taken before a boad of adjudication shall be recorded.

S.M. 1974, c. 65, s. 27.

Powers of the board.

28(1) Where the board of adjudication decides that there has been no contravention of the Act by any party, it shall dismiss the complaint.

En. S.M. 1976, c. 48, s. 18.

Powers of board.

28(2) Where the board of adjudication decides that a party has contravened any provision of the Act, it may do one or more of the following things:

(a) Make an order requiring the party who contravened the Act to do or refrain from doing anything in order to secure compliance with the Act.

(b) Make an order requiring the party who contravened the Act to compensate the person discriminated against for all, or such part as a board may determine, of any wages or salary lost or expenses incurred by reason of the contravention of this Act.

(c) Order the person who contravened the Act to pay to the person discriminated against, a penalty or exemplary damages in such amount as the board may determine, if the board is of the opinion that the person discriminated against suffered damages in respect of his feelings, or selfrespect.

En. S.M. 1976, c. 48, s. 18.

Board of adjudication to advise Attorney-General if delay.

28(3) Where a board of adjudication has not rendered a decision within 90 days after being appointed, the board shall forthwith, in writing, advise the Attorney-General of the reasons for the delay and indicate when a decision will be rendered.

En. S.M. 1982, c. 23, s. 24.

Action by Attorney-General.

28(4) At any time after 90 days have elapsed from the date of appointment of a board of adjudication, the Attorney-General may do any one or more of the following things:

(a) Fix a time within which the board shall render its decision or finding.

(b) Revoke the appointment of the board of adjudication and appoint a new board of adjudication, in which case the provisions of sections 21 to 31 apply, mutatis mutandis.

(c) If the board has completed a hearing of the evidence, order the board to file with the Court of Queen's Bench the record of the proceedings together with all the evidence in the board's possession which forms part of the record.

En. S.M. 1982, c. 23, s. 24.

Disposition by Court of Queen's Bench.

28(5) Upon receipt of the record and evidence under clause (4)(c), the Court of Queen's Bench shall consider and dispose of the matter based on the record and evidence, mutatis mutandis, as it would dispose of an appeal under section 30.

En. S.M. 1982, c. 23, s. 24.
S.M. 1976, c. 48, s. 18; Am. S.M. 1982, c. 23, s. 24.

Order becoming judgment of court.

29(1) Subject to subsection (2), where a board of adjudication makes an order under clause 28(2)(b) or (c) or both, it may file a certified copy thereof in the Court of Queen's Bench and upon the filing of the order, it becomes a judgment of the Court of Queen's Bench and may be enforced as a judgment of that court.

En. S.M. 1976, c. 48, s. 19.

When order may be filed.

29(2) An order referred to in subsection (1) shall not be filed,

(a) until the time for appeal therefrom has expired and no appeal is filed; or

(b) where an appeal is filed against the order, after the appeal is dismissed.

S.M. 1974, c. 65, s. 29; Am. S.M. 1976, c. 48, s. 19.

Appeal.

30(1) Any party to a hearing before a board of adjudication may appeal from a decision or order of the board, within 30 days from the making of the decision or order, to the Court of Queen's Bench.

Service of notice of appeal.

30(2) A copy of the notice of appeal shall, within 7 days of the filing thereof be served personally or by registered mail to the appellant on all other persons who were parties to the hearing and on the board.

Record to be filed on appeal.

30(3) Forthwith upon the receipt of a notice of appeal under this section, the board of adjudication shall file with the Court of Queen's Bench, the record of the proceedings before it in which the decision or order appealed from was made which, together with a transcript of the oral evidence taken before the board, if it is not part of the record of the board, shall constitute the record in the appeal.

S.M. 1974, c. 65, s. 30.

Powers of court.

31 An appeal under section 30 may be made on questions of law or fact, or both, and the court after hearing the appeal may,

(a) affirm or reverse the decision or order of the board of adjudication; or

(b) direct the board to make any other decision or order that the board is authorized to make under the Act; or

(c) substitute its decision or order for that of the board.

S.M. 1974, c. 65, s. 31; Am. S.M. 1976, c. 48, s. 20.

Application to court for order for compliance.

32 Where a board of adjudication makes an order under clause 28(2)(a) and the person against whom the order is made refuses, fails or neglects to comply with the order or any part thereof, the minister may apply by way of Originating Notice of Motion to the Court of Queen's Bench for an order requiring the person to comply with the order of the board of adjudication or any part thereof.

S.M. 1974, c. 65, s. 32; Am. S.M. 1976, c. 48, s. 21; S.M. 1984, c. 17, s. 13(2).

Offences and penalties.

33(1) Every person who,

(a) deprives, abridges or restricts or attempts to deprive, abridge or restrict any person or class of persons in the enjoyment of a right under this Act;

(b) contravenes any provision of this Act; or

(c) fails, refuses or neglects to comply with an order of a board of adjudication, in whole or in part, other than an order or part of an order directing for the payment of wages;

is guilty of an offence and liable on summary conviction,

(d) if an individual to a fine of not less than $100.00 and not more than $1,000.00; or

(e) if a corporation, trade union, employers' organization, employment agency or occupational association, to a fine of not less than $500.00 and not more than $5,000.00.

Laying of information.

33(2) A prosecution for an offence under this Act may be commenced on the information of the Commission or any person alleging on behalf of himself or of any class of persons that an offence has been committed under this Act.

Prosecution of employers' organization, trade union or occupational association.

33(3) A prosecution for an offence under this Act may be brought against an employers' organization, trade union, or occupational association in the name of the organization, union or association; and for the purpose of such a prosecution the organization, union or association shall be deemed to be a person, and any act or thing done or omitted by an officer or agent of such an organization, union, or association, shall be deemed to be an act or thing done or omitted by the employers' organization, trade union or occupational association.

Limitation of time for prosecution.

33(4) No information may be laid or prosecution commenced,

(a) with respect to an alleged offence under this Act after the expiration of one year from the date of the alleged offence; or

(b) with respect to the failure, refusal, or neglect to comply with an order or part of an order of a board of adjudication, after the expiration of one year from the date of the making of the order, or where an appeal was taken from the order and was dismissed, after the expiration of one year from the date of the dismissal of the appeal; or

(c) with respect to the failure, refusal or neglect to comply with an order or part of an order of a board of adjudication where the board has allowed time for compliance therewith, after the expiration of one year from the date of expiration of the time allowed by the board to comply with the order.

Consent to prosecution.

33(5) No prosecution for an offence under this Act shall be instituted without the consent in writing of the minister.

Technical defects.

33(6) No proceeding under this Act shall be deemed invalid by reason of any defect in form or any technical irregularity.

S.M. 1974, c. 65, s. 33.

PART IV

MISCELLANEOUS

Injunction.

34 In addition to what may be permitted by this Act, a person who deprives, abridges or otherwise restricts or attempts to deprive, abridge or otherwise restrict a person or class of persons in the enjoyment of a right under this Act because of the race, nationality, religion, colour, sex, age, marital status, physical or mental handicap, ethnic or national origin, political belief, family status, or source of income of the person; may be restrained by an injuction issued in an action in the Court of Queen's Bench brought by any person against the person responsible for the deprivation, abridgement or other restriction or any attempt thereat.

S.M. 1974, c. 65, s. 34; Am. S.M. 1976, c. 48, s. 22; Am. S.M. 1977, c. 46, s. 2; S.M. 1982, c. 23, s. 25.

Regulations.

34.1 The Lieutenant Governor in Council may, for the purposes of section 7, make regulations prescribing guidelines which may be followed by, but are not necessarily binding upon, the commission or a board adjudication.

En. S.M. 1976, c. 48, s. 23.

Crown bound.

35 The Crown, and every servant and agent of the Crown, is bound by this Act.

S.M. 1974, c. 65, s. 35.

Transitional provision.

36 Where prior to the coming into force of the amendments set out in this Act, any matter, application, proceeding, investigation or hearing was commenced, that matter, application, proceeding, investigation or hearing shall be continued and completed in accordance with the provisions of The Human Rights Act, being chapter H175 of the Revised Statutes, as it stood prior to the coming into force of this Act.

En. S.M. 1976, c. 48, s. 24.

Repeal.

37 The Human Rights Act, being chapter 104 of the Statutes of Manitoba, 1970 (chapter H175 of the Continuing Consolidation of the Statutes of Manitoba) is repealed.

S.M. 1974, c. 65, s. 37.

Reference in continuing consolidation.

38 This Act may be referred to as chapter H175 in the continuing consolidation of the Statutes of Manitoba.

S.M. 1974, c. 35, s. 38.

Commencement of Act.

39 This Act comes into force on a day fixed by proclamation.

S.M. 1974, c. 65, s. 39.

Note: This Act was proclaimed in force on October 25, 1974. See Manitoba Gazette, October 19, 1974, page 1185.

Printed by the Queen's Printer for the Province of Manitoba

APPENDIX F

Evolution of the Manitoba Human Rights Act

Group Factor / Grounds of Complaint	Notices/ Signs/ Symbols	Accommo-dations/ Services/ Facilities	Housing	Purchase of Property	Employ-ment	Contracts
Race	1970	1970	1970	—	1970	1970
	1974	1974	1974	1974	1974	1974
	1976	1976	1976	1976	1976	1976
Colour	1970	1970	1970	—	1970	1970
	1974	1974	1974	1974	1974	1974
	1976	1976	1976	1976	1976	1976
Nationality	—	1970	1970	—	1970	—
	1974	1974	1974	1974	1974	1974
	1976	1976	1976	1976	1976	1976
Ethnic/ National Origin	1970	1970	1970	—	1970	1970
	1974	1974	1974	1974	1974	1974
	1976	1976	1976	1976	1976	1976
Sex	1970	—	—	—	1970	1970
	1974	1974	1974	1974	1974	1974
	1976	1976	1976	1976	1976	1976
Marital Status	—	—	—	—	—	—
	1974	—	—	1974	1974	1974
	1976	1976	1976	1976	1976	1976
Age	—	—	—	—	—	—
	—	1974	1974	1974	1974	1974
	1976	1976	1976	1976	1976	1976
Family Status	—	—	—	—	—	—
	—	—	—	—	—	—
	1976	1982	1976	1982	1976	1976
Source of Income	—	—	—	—	—	—
	—	—	1974	—	—	—
	1976	—	1976	—	—	—
Religion	1970	1970	1970	—	1970	1970
	1974	1974	1974	1974	1974	1974
	1976	1976	1976	1976	1976	1976
Political Belief	—	—	—	—	—	—
	—	—	—	—	1974	—
	—	—	—	—	1976	—
Physical Handicap	1977	1977	1977	1977	1977	1977
Mental Handicap	1982	1982	1982	1982	1982	1982

APPENDIX G

Complaint of Discrimination Under The Manitoba Human Rights Act

Case No. _____

Name and Address of the person(s) filing the complaint (hereinafter called "the Complainant"):	Name and Address of the person(s) complained against called "the Respondent"):
Name and Address of any person or class of persons discriminated against in addition to or other than the Complainant(s).	

The Complainant alleges that in the Province of Manitoba

on or about the _____ day of _____, 19____;

OR

on a continuing basis up to and including the _____ day of _____, 19____;

that the Respondent(s) did contravene section(s) _____ of **The Human Rights Act**, or any other applicable section, as follows:

SAMPLE

I certify that the foregoing information is correct to the best of my knowledge and I believe that the events described above constitute a contravention of **The Human Rights Act**.

I hereby confirm that the Manitoba Human Rights Commission and its officers have my consent to examine and/or make copies of any and all records, reports, documents or data, including all medical records, as may be required, in the investigation of this complaint.

City/Town Complaint Signed At	Date Day / Month / Year	Signature of Complainant

APPENDIX H

The Manitoba Human Rights Commission Publications List

Guidelines: Housing (1985)

— This 15 page booklet sets out the housing provisions of *The Manitoba Human Rights Act*. Of interest to owners, apartment managers, rental agencies, tenants and members of the public.

Guidelines: Pre-employment Inquiries (1984)

— Outlines, in 14 pages, the pre-employment provisions of *The Manitoba Human Rights Act*. Information is likely to be of use to employers, personnel departments, employment agencies, people seeking employment, and members of the general public.

Inventory of Human Rights Teaching Materials (1984)

— Contains a bibliography of human rights teaching materials available in Manitoba. Materials are for use in the classroom or as source books for teachers (26 pages).

The Manitoba Human Rights Act (Brochure)*

Outlines the basic provisions of Manitoba's human rights legislation.

The Manitoba Human Rights Commission Annual Report

— Contains information on the Commission's structure and function, major activities of the past year, case examples, statistical highlights and a copy of *The Human Rights Act* of Manitoba.

Sexual Harassment: Does it affect your workplace?/Does it affect you? (Brochure)

— Contains information for both employers and employees on what constitutes sexual harassment and what can be done about it.

Taxi: Serving the Handicapped Fare (Brochure)

— Sets out the rights and responsibilities of cab drivers serving taxi customers or potential customers with physical disabilities. Also contains tips to drivers for providing effective, quality service to handicapped customers.

A Guide for Respondents (Brochure)*

— Outlines the rights and responsibilities of employers, proprietors, rental agents, etc. under *The Human Rights Act*. (To be available in 1986.)

*Available in both French and English.

Audio-Visual Materials

"The Eye of the Storm", New York: American Broadcasting Companies Inc., 1970 (28 min.)

Documentary about a 3rd grade teacher who uses eye-colour as a basis to teach students the realities of prejudice and discrimination.

A list of discussion questions has been developed to accompany this film.

"Buttonville", The Alberta Human Rights Commission, 1979. (25 min.)

Cartoon story about plant people who are all required to wear identifying buttons. When one of the plant people loses his button the whole town learns a lesson about labelling.

A Teacher's Guide is also available which includes various learning activities for Grades 1-3 and Grades 4-6.

"A Different Approach", The South Bay Mayor's Committee for Employment of the Handicapped, 1978 (20 min.)

Designed to dispel myths and prejudices about employment of the handicapped, the film contains a series of comedy vignettes presenting handicapped individuals performing various job functions.

"The Workplace Hustle", Clark Communications, 1980. (30 min.)

A group of women and a group of men discuss sexual harassment in the workplace. Lin Farley, author of *Sexual Shakedown*, talks about sexual harassment, why it happens and the effect it has on its victims.

A list of discussion questions has been developed to accompany this film.

"Preventing Sexual Harassment", BNA Communications, 1980 (20 min.)

The film discusses examples of sexual harassment and informal and formal ways with which it can be dealt. Legal avenues discussed are based on American law.

"See What I Say", Michigan Women Filmmakers, 1981. (25 min.)

The deaf discuss how American Sign Language enables them to communicate. A concert for the deaf by Holly Near illustrates the expressiveness and beauty of the language.

"What You Should Know About the Human Rights Act"

Video-tapes VHS and Beta format available.

— This 30 minute video-tape includes basic information about *The Human Rights Act*. It is divided into three segments each containing the same information. Segment 1 is in the Cree language. Segment 2 is in the Island Lake Dialect and the third segment is in Saulteaux (Ojibway language). Each segment deals with an explanation about the Commission, the protection offered under *The Act* and information pertaining to complaints.

"Human Rights for the Deaf", 1982 (29 min.)

Video-tape 3/4 in. format.

— A presentation about human rights made to the Kiwanis Centre for the Deaf, which was video-taped by Channel 13. It includes simultaneous translation in American Sign Language (ASL).

"The Charter and You"

Video-tape 3/4 in. format.

— This 60 minute video-tape, prepared by Confederation College of Applied Arts and Technology for the Department of the Secretary of State, Canada, is accompanied by a Reference Guide and Teacher's Guide. It is intended to be an introduction to *The Charter's* provisions and how they impact upon individual Canadians in their every-day affairs.